

**STATE V. WILLIAMS: THE COURT OF
CRIMINAL APPEALS OF TENNESSEE
INCORRECTLY ALLOWED RAP
LYRICS AS EVIDENCE TO PROVE THE
CHARACTER OF THE ACCUSED**

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I. INTRODUCTION

Originating at underground block parties in the Bronx during the 1970s, to now filling football stadiums to capacity with avid fans, rap music has become arguably the most popular music genre in the United States.¹ The creation of rap music is intimately tied to the historical tradition of Black storytelling and poetry.² In the 1990s, rap music began its evolution into what is colloquially referred to as “gangsta rap.”³ Here, “emcees” (a phrase derived from the term MC, or master of ceremonies) would speak in rhyme over beats to address their own personal experiences with topics such as socio-political division, systemic oppression, and inner-city life.⁴ Although depicting the artist’s genuine interpretation of the climate at the time, this genre heavily utilized profanity, misogyny, and violence, which fostered a negative perception of the genre.⁵ In modern times, the use of rap lyrics has made its way into criminal courts as character evidence, specifically, in an attempt to prove motive or intent of alleged crimes.⁶ This has been done through the use of the *Federal Rules of Evidence* (“FRE”) Rule 404(b)(2).⁷ FRE 404 generally states that evidence of a person’s character or history of prior bad acts may not be used to prove, on a particular occasion, the person acted in accordance with that character.⁸ However, this rule further outlines exceptions to this standard with FRE 404(b)(2), which admits character evidence when proving “motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident.”⁹ By utilizing this exception, prosecutors argue that these lyrics display prior knowledge or intent to commit the alleged crimes.¹⁰ However, the modern trend of courts utilizing rap lyrics as evidence has recognized the dangers of this practice, as these lyrics could constitute highly prejudicial evidence against defendants, that provide little probative value toward motive or intent of the alleged

1. Vidhaath Sripathi, *Bars Behind Bars: Rap Lyrics, Character Evidence, and State v. Skinner*, 24 IOWA J. GENDER, RACE & JUST. 207, 207–17. In 2021, rap music totaled a 33.9% share of music album consumption in the United States, the largest share of all music genres. *Id.* at 216.

2. *Id.* at 212.

3. *Id.* at 213.

4. *Id.* at 211, 213. “F*ck the Police” by N.W.A. protested police brutality; “N.Y. State of Mind” by Nas depicted the artists’ personal tale of growing up in inter-city New York; “Fight the Power” by Public Enemy outlined systematic oppression. *Id.*

5. *Id.* at 213.

6. *Id.* at 208.

7. *Id.* at 219.

8. FED. R. EVID. 404.

9. FED. R. EVID. 404(b)(2).

10. Sripathi, *supra* note 1, at 219.

specific crime in question.¹¹ In *State v. Skinner*,¹² the court followed an exclusionary interpretation of FRE 404(b), and required a “direct connection between the lyrics and the crime in question” as the standard for character evidence.¹³

In *State v. Williams*,¹⁴ the Court of Appeals of Tennessee reviewed the trial court’s holding to allow a video of the defendants rapping as evidence.¹⁵ In this case, a jury convicted several defendants of multiple felonies centered around the shooting of Zaezion Dobson.¹⁶ On appeal, all defendants motioned to suppress the trial court’s admission of the YouTube video of the defendants rapping.¹⁷ The defendants argued the admission of this video was unfairly prejudicial.¹⁸ The court held that this evidence was admissible as it demonstrated the defendants’ motive and intent in committing the offenses.¹⁹

To begin the determination of whether the Court of Criminal Appeals of Tennessee correctly allowed the rap video in *State v. Williams* as character evidence, this Note will first review the facts and holding of *Williams*.²⁰ This Note will then generally review the development of the rap genre and the stigmas that followed it.²¹ This Note will then review cases that display the modern trend of courts limiting the admission of rap lyrics as character evidence to prove intent.²² Lastly, this Note will argue the Court of Criminal Appeals of Tennessee incorrectly allowed the rap video in *State v. Williams* as character evidence, and that courts should follow the “direct connection between lyrics and the crime in question” standard outline in *Skinner*.²³

11. *State v. Skinner*, 95 A.3d 236, 238 (2014).

12. 95 A.3d 236 (2014).

13. Sripathi, *supra* note 1, at 225. The court argued that although the lyrics used as evidence contained graphic scenes of violence, as they were written prior to the criminal offense, the lyrics contained no specific details to the crime in question. *Id.*

14. No. E2019-02236-CCA-R3-CD, 2022 WL 152516 (Tenn. Crim. App. May 25, 2021).

15. *State v. Williams*, No. E2019-02236-CCA-R3-CD, 2022 WL 152516, at *1 (Tenn. Crim. App. May 25, 2021).

16. *Williams*, No. E2019-02236-CCA-R3-CD, 2022 WL 152516, at *1.

17. *Id.* The YouTube video titled “Double O” displayed the defendant’s affiliation with the Bloods gang, and articulated their strife with their rival gang, the Crips. *Id.* at *64.

18. *Id.* at *67.

19. *Id.* at *68–69. The court relied on Tennessee Rule of Evidence 404(b), which provides similar exceptions to FRE 404(b)(2), in that character evidence can be admissible if it demonstrates motive and intent of the accused. *Id.*

20. *See infra* notes 12–18 and accompanying text.

21. *See infra* notes 2–5 and accompanying text.

22. *See infra* notes 10–11 and accompanying texts.

23. *See infra* note 13 and accompanying text.

II. FACTS AND HOLDING

The relevant facts of the case span over several months, but begin at the Lonsdale Homes apartment complex in Knoxville, Tennessee, on December 17, 2015.²⁴ Latasha Colbert lived at this apartment complex on Badgett Drive, and thus will be referenced to as the Badgett residence.²⁵ Latasha was the mother of two children, and was close friends with two other women, Faith and Kiara, who also had children; Faith and Kiara often spent time with Latasha at the Badgett residence, making this location a common spot for teenagers to gather and socialize.²⁶ On the evening of December 17, 2015, after the local school's basketball game, the three women arranged a gathering for their kids at the Badgett residence.²⁷ With all the kids downstairs, some on the porch, Latasha and her friends were upstairs watching television when Latasha heard gunfire from downstairs and called 911.²⁸ When she felt it was safe, she went downstairs, found her kids physically unharmed, but surrounded by broken glass which was later determined to be caused by bullets coming through the living room window.²⁹ After rushing her kids to her bedroom, Latasha began checking the house, opened the outside door, and found victim, Zaevion Dobson, lying faced down, dead.³⁰ Returning inside the house, Latasha noticed a black BMW parked on the street from the Badgett residence that left shortly after the scene.³¹ At this time, two other boys, Zack and Louis, who were also at the Badgett residence at the time of the shooting, returned to the property after having fled once shots began to fire.³² Louis informed police that four men dressed in

24. State v. Williams, Tenn. Crim. App., 1, 1 (2022). This apartment complex is located west of major Tennessee highway I-275; at the time of this shooting, anything west of this highway was notorious as Crips gang's territory, with everything east of the highway considered their rival gang, the Bloods', territory. *Id.*

25. *Id.* at *12. Ms. Latasha Colbert, although sharing the same surname as one of the defendants to this case, has no familial relationship to the defendant (to avoid confusion, Ms. Colbert will be referred to as Latasha for the purpose of this Note). *Id.*

26. *Id.* In the Tennessee Criminal Appeals Court's opinion, surnames of parties entangled in this case were left off for privacy purposes, this Note will do the same.

27. *Id.*

28. *Id.*

29. *Id.* at *12, *13.

30. *Id.* Police forensics found 34 bullet casings, 23 belonging to a .40 caliber handgun, 11 to a 9mm handgun. *Id.* at *21.

31. *Id.* at *14. Latasha later testified that after noticing the black BMW, the vehicle drove off, but later returned, only to again drive away from the scene, this time in the opposite direction. *Id.*

32. *Id.* Zack, the brother of the victim, testified that he and his brother had no gang affiliations, but were both knowledgeable of the local gang situation and territorial divide, partially due to locally produced rap music that outlined the territorial strife. *Id.* at *20.

black hoodies had approached the children on the porch, then suddenly opened fire without warning.³³

That same evening, Devante, a friend of Louis who also lived in the Lonsdale apartment complex near the Badgett residence, was making his way to another friend's house.³⁴ Upon leaving, Devante noticed eight men, all wearing black oversized hoodies, approach him; all the men continued past him except for one, who asked Devante, "What's brackin'?"³⁵ Devante responded, "What's up fam," with the man then asking, "What you bang?"³⁶ Devante responded with "I don't bang," then left the scene due to his suspicion of the men's intentions and returned home.³⁷ It took Devante several minutes to return home, at which point he called Louis to warn him of the men's presence and urge him to stay home, but Louis did not answer—based on cell phone call history logs, it was determined that Devante called Louis as he was already fleeing the Badgett residence after gun fire began.³⁸

During the trial at the Criminal Court for Knox County, the State presented both substantive forensic evidence and corroborative evidence.³⁹ Although the State had arguably strong forensic evidence, the prosecution relied heavily on corroborative evidence used to show the defendant's gang affiliation and motive for the shootings.⁴⁰ The State presented Knox County Sheriff Thomas Walker, a qualified expert on gang activity in the area.⁴¹ Walker summarized for the court the history of gang geographical division, outlining strict territorial division between the east Bloods, and west Crips.⁴² Walker used graffiti art to 'landmark' the territorial divide in the community, outlined other recent gang related acts of violence, but most significantly, presented to the court a music video produced by the defendants titled "Double O."⁴³ The prosecution played this video for the jury, while

33. *Id.* Due to the four men wearing large, oversized hoodies with their hoods on, Louis was unable to identify any of the shooters. *Id.* at *16. It was determined that the first shots were fired at approximately 10:00 PM. that evening. *Id.* at *11.

34. *Id.* at *19.

35. *Id.* "Brackin" is a popular salutation in the gang community. *Id.* at *19.

36. *Id.* Devante, familiar with common gang terminology, understood this line to mean "What gang are you affiliated with?" *Id.* at *19.

37. *Id.*

38. *Id.* at *20.

39. *Id.* at *36. In defendant Williams' vehicle, a .40 caliber Smith & Wesson handgun was found, and along the path of the car chase that took place during his arrest, a 9mm Luger pistol was found abandoned on the floor. *Id.* at *37.

40. *Id.* at *36. At trial, the state presented a police firearms examiner's expert testimony that determined that the guns taken from Williams were the same guns that fired the eleven-casing recovered at the Badgett shooting, including the bullets recovered from the victim, Dobson's, body, and the bullets fired in the North shooting. *Id.* at *35.

41. *Id.* at *38.

42. *Id.*

43. *Id.*

Walker outlined gang colors, symbols, and lyrical references in the song that indicated the defendant's association with the Bloods gang.⁴⁴ The State presented Mr. North, who identified all the defendants in the rap video.⁴⁵

Following the prosecution's argument, the defense presented Erik Nielson, an expert witness in the field of rap music.⁴⁶ In his testimony, Nielson articulated the difference between "real gangsters" and "studio gangsters," explaining that "studio gangsters" are musicians, and that their gang persona is not a true depiction of the artists real life or intentions, but simply a persona these musicians adopt to gain success in the rap industry.⁴⁷ Nielson outlined the origin and history of rap music, stating that one of the initial purposes in the development of the genre was to take the aggression and competitiveness laced in gang life and present it in an artistic version of storytelling.⁴⁸ With this being an underlying use of the genre, Nielson further elaborated that in the modern rap industry, record labels are simply not interested in "more socially conscious stuff," therefore pushing aspiring rappers towards the violent nature of rap prominent today.⁴⁹ Nielson argued that although rap lyrics contain language that supports violent behavior and illicit, even illegal, activity, this is simply a form of storytelling outlining a way of life, that label records have driven aspiring artists to.⁵⁰

44. *Id.* The lyrics of the song articulated the rigid territorial divide between the local Bloods and Crips, and demonstrated the Blood's strong hatred for their rival gang, alluding to acts of violence the Bloods would commit towards the Crips if they did not respect the territorial divide. *Id.* The video contained the defendants using hand gestures that symbolized their affiliation with the Bloods gang. *Id.* Walker also presented text messages between Mr. North and Williams that included language associated with the Bloods gang. *Id.* at *39.

45. *Id.* Devante, one of the boys who fled the Badgett shooting, when showed the "Double O" music video, identified Mr. Colbert as the man who asked him "what's brackin'?" shortly before the shooting. *Id.* at *43.

46. *Id.* Erik Nielson is a professor of Liberal Arts at the University of Richmond, who is known as an expert in the use of rap lyrics in criminal trials. *Erik Nielson*, AM. C.L. UNION, <https://www.aclu.org/bio/erik-nielson> (last visited Jan. 17, 2023). Nielson focuses his research on the tense dynamic between African-American culture and policing, and the tension between rap music and politics. *Id.*

47. *Williams*, No. E2019-02236-CCA-R3-CD, 2022 WL 152516, at *44–45. In his testimony, Nielson attempted to inform the jury on the history of what he has coined the "murder ballad"—Nielson argued that for decades, music has contained violent lyrics, including depictions of violence and murder, and that this theme is not limited to the rap genre. *Id.*

48. *Id.* at *40.

49. *Id.* at *40–41. Nielson notes that generally in the competitive industry of music production, artists are forced to 'push boundaries' in order to stand out from their competition; that it follows logically that aspiring artists will produce extremely violent lyrics, not due to their desire to be violent, but to produce work unique from other artists that will give them a better chance to be recognized. Erik Nielson, *Rap on Trial*, 4, RACE & JUST. 190, 211 (2014).

50. *Id.* at 193.

At the conclusion of the trial court, the jury convicted the defendants on all charges.⁵¹ It was on these rulings that the defendants appealed to the Court of Criminal Appeals of Tennessee, at Knoxville.⁵² On appeal, the defendants made several assertions, including that the trial court improperly denied motions to suppress evidence obtained at both the Badgett shooting, and that the evidence used to convict Williams and Colbert lacked sufficiency; however, the most notable assertion came from all three defendants—that the trial court’s admission of their “Double O” rap video was irrelevant and unfairly prejudicial.⁵³

For this challenge, the defendants argued that any probative value gathered from the admission of the rap video was outweighed by the prejudicial effect this video had on the jury.⁵⁴ The court of appeals determined that the admission of evidence at the trial level is entrusted to the discretion of the trial court, and the trial court’s determination on the admission of evidence may only be overruled with a showing of an abuse of discretion.⁵⁵ Further, the court of appeals determined that the trial court’s exercise of discretion can only be reversed if the court utilized an incorrect legal standard, or reached a determination that goes against logic or reasoning, that ultimately caused an injustice to the complaining party.⁵⁶

Relevant evidence, under *Tennessee Rules of Evidence* Rule 401, is evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would have been without the evidence.⁵⁷ However, this is limited by *Tennessee Rules of Evidence* Rule 403, which prohibits the admission of relevant evidence if the probative value of the evidence is substantially outweighed by the danger of unfair prejudice, confusion of the issues, misleading the jury, by considerations of undue

51. *Williams*, No. E2019-02236-CCA-R3-CD, 2022 WL 152516, at *44–45. Bassett was convicted on two accounts of unlawful possession of a firearm, one account of first-degree murder, five accounts of attempted first-degree murder, three counts of attempted second-degree murder, eight counts of employing a firearm during the commission of a dangerous felony, and eight counts of employing a firearm during the commission of a dangerous felony having been convicted of a drug offense; Williams and Colbert were convicted on one account of facilitation of first degree murder, five accounts of facilitation of attempted first-degree murder, three accounts of facilitation of attempted second-degree murder, and eight counts of facilitation of employing a firearm during the commission of a dangerous felony. *Id.* Bassett was sentenced to a life sentence plus thirty-five years; Williams and Colbert were sentenced to each receive a one hundred-and seven-year sentence. *Id.*

52. *Id.*

53. *Id.* at *45–46

54. *Id.* at *63.

55. *Id.* at *60; *see also* State v. Robinson, 146 S.W.3d 469, 490 (Tenn. 2004); State v. DeBosa, 953 S.W.2d 649, 652 (Tenn. 1997).

56. State v. Shuck, 953 S.W.2d 662, 669 (Tenn. 1997).

57. TENN. R. EVID. 401. <https://www.tncourts.gov/rules/rules-evidence/401>.

delay, waste of time, or needless presentation of cumulative evidence.⁵⁸ Lastly, *Tennessee Rules of Evidence* Rule 404(b) states that evidence of other wrongs or bad acts is not admissible to prove the character of a person in order to show action in conformity with the character trait; this however, only applies to acts which reflect upon the character of the accused.⁵⁹ 404(b) goes on to state that such evidence may be allowed for “other purposes,” so long as the probative value of the evidence is outweighed by the danger of unfair prejudice.⁶⁰ In Tennessee, case law has determined that “other purposes” can include: (1) motive; (2) intent; (3) guilty knowledge; (4) identity of the defendant; (5) absence of mistake or accident; (6) a common scheme or plan; (7) completion of the story; (8) opportunity; and (9) preparation.⁶¹

The Court of Criminal Appeals of Tennessee held that the evidence concerning the defendant’s gang affiliation was subject to *Tennessee Rule of Evidence* Rule 404(b)—that the rap video displayed the defendant’s relation with gangs and gang related activity, which the court held provided evidence of motive for the shooting.⁶² The court determined that the probative value of the evidence was not outweighed by the danger of unfair prejudice.⁶³ Thus, the defendants were not entitled to relief on this issue, as it was held that the trial court did not abuse its discretion in allowing the gang-related rap video to be admissible as evidence.⁶⁴

III. BACKGROUND

A. THE EVOLUTION OF RAP MUSIC: THE PROGRESSION OF THE “MURDER BALLAD” TO THE MOST LISTENED TO, YET MOST SCRUTINIZED MUSIC GENRE

In the 1990s, the American music industry saw the rapid success of rap icons such as Tupac Shakur, Dr. Dre, Snoop Dogg, and Biggie Smalls.⁶⁵ These artists, by sticking to the initial ‘murder ballad’ style

58. TENN. R. EVID. 403. <https://www.tncourts.gov/rules/rules-evidence/403>.

59. TENN. R. EVID. 404(b). <https://www.tncourts.gov/rules/rules-evidence/404>. See also *State v. Stevens*, 78 S.W.3d 817, 837 (Tenn. 2002).

60. TENN. R. EVID. 404(b). <https://www.tncourts.gov/rules/rules-evidence/404>.

61. See *State v. Parton*, 694 S.W.2d 299, 302 (Tenn. 1985); see also *Bunch v. State*, 605 S.W.2d 227, 229 (Tenn. 1980); *State v. Jones*, 15 S.W.3d 880, 894 (Tenn. Crim. App. 1999).

62. *Williams*, 2022 Tenn. Crim. App. LEXIS 20, at *70 (2022). See also *State v. Orlando Cravton*, Tenn. Crim. App. 476 (Tenn. 2001); see also *State v. Ronald Eugene Brewer Jr.*, 538 (Tenn. 2011).

63. *Williams*, No. E2019-02236-CCA-R3-CD, 2022 WL 152516, at *71. The rap video showed the defendants referencing the gang territory divide in Knoxville, Tennessee, that the defendants associated with the Blood gang, that they disliked their rival gang, the Crips, and that they allegedly had a desire to harm members of the rival gang. *Id.*

64. *Id.* at *70–71.

65. Sripathi, *supra* note 1, at 216.

of rap, paved the way for rappers such as Outkast, Jay-Z, Missy Elliot, and Ye (colloquially still known as Kanye West), to see international fame in the 2000s.⁶⁶ This trend has only risen, and by 2021, rap music amounted a 33.9% share of total music consumed in America—the highest of all music genres.⁶⁷ With the creation of digital and online streaming services, what was once strongly opposed by censorship advocates and government officials, the rap genre expanded even further, tapering off into rap sub-genres that displayed the wide diversity of rap artists, while still displaying common themes from the original “murder ballad” that sparked the genre’s success.⁶⁸ Rappers such as Kendrick Lamar and J-Cole continued the “emcee” tradition of early rap by utilizing socially conscious lyrics focused on addressing political concerns, racial inequality, and personal tales of overcoming adversity and many other themes.⁶⁹ Other rappers veered away from the “emcee” style of rapping, giving rise to what today is known as “mumble rap”—rap music not focused on political or social commentary, but instead, hype, aggressive beats with auto-tuned processed vocals and sound effects.⁷⁰ Although not possessing the lyrical storytelling of early rap, these artists stay true to the themes present in the “murder ballad” by utilizing generally aggressive lyrics outlining violence, masculinity, and drug use.⁷¹ Modern female rappers credit their success to their successors, who took the risk of becoming rappers at a time when woman rappers seldomly saw success.⁷² Artists such as Nicki Minaj, Cardi B, and Megan Thee Stallion, who rap about topics that were once seen as taboo, such as female sexuality, independence, and their personal successes in a male dominated industry, credit female rappers such as Lil’ Kim and Remy Ma as inspiration for their creative flow.⁷³ However, arguably the most influential aspect of the success of the rap genre, lies in its ability and propensity to be infused with other genres, and the success

66. *Top 100 Artists of the 2000s*, TOP 40 WEEKLY, <https://top40weekly.com/top-100-artists-of-the-00s/> (last visited Jan. 17, 2023). In the 2000s, Outkast, a rap duo consisting of Andre 3000 and Big Boi, was listed as the top artist of the decade, Eminem at number two, Kanye West at five, Jay-Z at 12, and Missy Elliot at 19. *Id.*

67. Sripathi, *supra* note 1, at 217.

68. *Id.*

69. *Id.*

70. *Id.* According to the Billboard Top 100, mumble rappers take many of current top rapper positions, with Lil Baby ranked two, Future ranked three, Gunna ranked eight, and Kodak Black ranked nine. *Year-End Charts: Top Rap Artists*, BILLBOARD, <https://www.billboard.com/charts/year-end/top-rap-artists/> (last visited Jan. 18, 2023).

71. *Id.*

72. *Id.*

73. *Id.* According to Billboard Top 100, in 2022, the top ten female artists in the United States consisted of three rappers, with Doja Cat ranking two, Lizzo ranking eight, and Latto ranking nine. *Year-End Charts: Top Artists - Female*, BILLBOARD, <https://www.billboard.com/charts/year-end/top-artists-female/> (last visited Jan. 17, 2023).

of these collaborations.⁷⁴ In 2019, rapper Lil Nas X recorded the song “Old Town Road,” which featured the musical talents of country singer Billy Ray Cyrus; in this song, Lil Nas X rapped over a non-traditional rap beat, that instead included Billy Ray Cyrus playing an acoustic guitar and singing both in his own verse and alongside Lil Nas X.⁷⁵ This song became the most popular in the United States, having rose to the top of the Billboard Top 100 music chart, then setting a record for the longest consecutive number one single on the Billboard charts.⁷⁶ This is not the first occasion of a rapper collaborating with an artist of a different genre to create a successful song; in 1986, rock band Aerosmith teamed up with rap group Run-DMC to remix Aerosmith’s song “Walk This Way.”⁷⁷ In 2004, alternative rock band Linkin Park collaborated with rapper Jay-Z to release the song “Numb/Encore.”⁷⁸ This song reached the Billboard’s Top 100, ranking twentieth; Linkin Park’s next song that made this list only reached eighty-eight.⁷⁹ In 2010, rapper Eminem teamed up with R&B singer Rihanna to release “Love the Way You Lie,” which had Rihanna singing the song’s chorus, while Eminem rapped the song’s verses.⁸⁰ That year, this song ended as the number seven song of the year, according to Billboard’s Top 100.⁸¹

If not for the early stages of rap, the original “murder ballad,” the rap genre would not have seen the success it has.⁸² Although the genre has taken new forms over its evolution, aspects of the style of early rap music and the “murder ballad” can still be seen in modern rap, with lyrics concerning violence, gang culture, and criminal behavior.⁸³ Yet, despite the genre’s obvious widespread popularity, cultural perception of rap music generally has remained negative.⁸⁴ Historically,

74. Sripathi, *supra* note 1, at 217.

75. *Id.*

76. *Id.*

77. *Id.* Rolling Stones Magazine ranking Aerosmith’s original version of the song “Walk this Way” at 346 on their Top 500 Greatest Songs of All Time, while the version featuring Run-DMC at ranked 293. *The 500 Greatest Songs of All Time*, THE ROLLING STONES (Sept. 15, 2021), <https://www.rollingstone.com/music/music-lists/best-songs-of-all-time-1224767/>.

78. BILLBOARD DATABASE, <https://billboard.elpee.jp/single/Numb%2FEncore/Jay-Z%2FLinkin%20Park/> (last visited Jan. 17, 2023).

79. *Billboards Top 100*, <https://billboard.elpee.jp/single/Numb%2FEncore/Jay-Z%2FLinkin%20Park/> (last viewed Jan. 17, 2023).

80. Sripathi, *supra* note 1, at 218.

81. *Billboard Top 100 2010*, BILLBOARD, <http://billboardtop100of.com/2010-2/> (last visited Jan. 17, 2023).

82. VIDHAATH SRIPATHI, *BARs BEHIND BARs: RAP LYRICS, CHARACTER EVIDENCE, AND STATE v. SKINNER*, IOWA J. OF GENDER, RACE & JUSTICE, 207, 216 (2021).

83. *Id.*

84. *Id.* In 2008, the Pew Research Center conducted a United States survey on music listeners’ assessment of the rap genre—the poll found 70% of Americans held a negative opinion of the rap genre, believing the genre had a “bad” impact on society. *See also, Rate Rap Low*, PEW RES. CTR. (Feb. 5, 2008), <http://perma.cc/7HXY-6YTW> (finding

rap artists have been linked to criminality; that rap music itself and its artists inherently support or even engage in criminal behavior.⁸⁵ As courts allow violent rap lyrics to prove criminal intent or motive against defendants, stereotypes of rap artists engaging in criminal behavior only heighten, as juries tend to strictly interpret these rap lyrics, disregarding the metaphoric or poetic nature of these lyrics.⁸⁶

B. *DAVIDSON v. TIME WARNER*: ALTHOUGH STILL UTILIZING VIOLENT LANGUAGE, AS THE RAP GENRE BECAME MORE PROMINENT, COURTS BEGAN RECOGNIZING THE ARTISTIC VALUE OF THE GENRE

In *Davidson v. Time Warner*,⁸⁷ United States District Court for the Southern District of Texas held that the rapper of violent songs was not liable for the murder of a police officer, as this rapper did not have a duty to prevent the distribution of said songs when it was not reasonably foreseeable that this distribution would lead to violence.⁸⁸ In *Davidson*, Ronald Howard was driving a stolen car when pulled over by Officer Davidson for a traffic violation unrelated to the stolen vehicle.⁸⁹ During the stop, Howard fatally shot Davidson with a nine millimeter Glock handgun; at the time of the murder, Howard was listening to the album “2Pacalypse Now” by rapper Tupac Amaru Shakur.⁹⁰ After a criminal trial that sentenced Howard to death, the Davidsons filed a civil suit alleging rapper Tupac was liable for producing violent music that proximately caused the death of Officer Davidson.⁹¹ The court held that rapper Tupac was not liable for the death of Officer Davidson, as the song lyrics did not constitute “fighting words,” nor incite the immediate violence that occurred in this case.⁹²

Although a civil case that does not address the use of rap lyrics as evidence, this case demonstrates courts’ general movements away from promoting the stigmas of profanity ridden rap lyrics as strictly

that seven in ten Americans hold a negative perception of the rap genre; in this survey, 71% of blacks and 74% of whites agreed that rap has a negative impact on society).

85. Sripathi, *supra* note 1, at 218–19. Historically a Black form of art, it is likely stereotypes of Black people linked to criminality have helped fuel this negative attitude of the rap genre. *Id.* See also Jason E. Powell, *R.A.P.: Rule Against Perps (Who Write Rhymes)*, 41 RUTGERS L. J. 479, 485–86 (2009).

86. Sripathi, *supra* note 1, at 218.

87. No. V-94-006, 1997 U.S. Dist. LEXIS 21599 (S.D. Tex. Mar. 28, 1997).

88. *Davidson v. Time Warner*, No. V-94-006, 1997 U.S. Dist. LEXIS 21559, at *1, *67 (S.D. Tex. Mar. 28, 1997).

89. *Id.* at *4.

90. *Id.* Although the court did not identify which song Howard was listening to from this album, the court noted on song on the album titled “Crooked Ass N*gga”, that includes the lines “I got a nine millimeter Glock Pistol, I fired 13 shots and popped another clip, the more I shot, the more motha**kas dropped, and even cops got shot when they rolled up.” *Id.* at *n.4

91. *Id.* at *4–6.

92. *Id.* at *61–62.

violence inciting works that display the character of its creator.⁹³ The court held that the “fighting words” doctrine applies when one exclaims an epithet at another that directly causes the listener to retaliate.⁹⁴ Although the court recognized the “general offensive” speech utilized in the album, the court held that it would not be reasonable to assume listeners would lash out because of this speech, and thus, it was not reasonable that such lyrics were likely to cause violence.⁹⁵ Despite the Davidsons’ argument that Tupac’s lyrics incited violence, the court held this argument placed too much significance on the literal lyrics themselves, and not enough on the intended message of Tupac.⁹⁶ In holding that, although ridden with violence and profanity, violent rap lyrics do not rationally cause a person to mistake lyrics for literal commands or directives to immediate action, the court recognized the genre’s artistic value hidden within the lyrics, which suggests these lyrics should not be taken literally.⁹⁷

C. *ELONIS v. UNITED STATES*: WITH THE GROWING POPULARITY OF VIOLENT RAP LYRICS, COURTS BEGAN REQUIRING MORE THAN THESE LYRICS ALONE TO PROVE INTENT

In *Elonis v. United States*,⁹⁸ the United States Supreme Court held that violent rap lyrics alone are not sufficient to show mens rea when attempting to prove a defendant’s intent when committing an alleged crime.⁹⁹ Anthony Elonis had been married to his wife for nearly seven years, until the two split in 2010, with Elonis’s wife taking their two young children to live with her.¹⁰⁰ Already an avid internet user who would regularly post on the social media website Facebook, Elonis began listening to violent rap music and posting on Facebook similar styled rap lyrics that he wrote.¹⁰¹ Although he frequently posted disclaimers on his lyrics, stating his lyrics were fictitious and were not meant to resemble any real people, Elonis’s lyrics included graphically

93. *Id.* at *66.

94. *Id.* at *60.

95. *Id.* at *59–60.

96. *Id.* at *64. The court recognized an interview in a later recording on the album *2pacalypse Now*, where Tupac states “I think of me as fighting for the black man. . . I’d rather die than go to jail. . . It makes you want to think. It makes you want to ask questions.” *Id.* at *65 n.42.

97. *Id.*

98. 575 U.S. 723 (2015).

99. *Elonis v. United States*, 575 U.S. 723, 726 (2015).

100. *Id.*

101. *Id.* Elonis changed his public name on Facebook to “Tone Dougie” and eventually testified that he felt his writing was therapeutic and “helped [him] deal with [his] pain.” *Id.*

violent language and imagery.¹⁰² After discovering one of these posts, Elonis's boss fired Elonis.¹⁰³ Elonis eventually elevated his online posting, now regularly posting crude, degrading, and violent lyrics towards his soon-to-be ex-wife; inspired by the comedy skit "It's Illegal to Say. . ." by the comedy troupe The Whitest Kids U'Know, Elonis wrote a remix of the skit, but included language alluding to him killing his ex-wife.¹⁰⁴ After finding some of Elonis's posts, his wife felt afraid and scared for her life; a state court granted her a three-year protection-from-abuse order from Elonis.¹⁰⁵ Despite the protection order, Elonis continued his social media tirade with more violent lyrics directed at his soon-to-be ex-wife, even going so far as to express his disapproval of the protection order and the justice system.¹⁰⁶ Finally, Elonis wrote violent lyrics directed at an elementary school, at which point he was charged with making threats to injure patrons and employees at his former workplace, his estranged wife, a kindergarten class, and an FBI agent—all actions in violation of 18 U.S.C. § 875(c).¹⁰⁷

Pursuant to 18 U.S.C. § 875(c), an individual can face up to five years in prison if that individual transmits in interstate or foreign commerce any communications containing any threat to kidnap any person or any threat to injure the person of another.¹⁰⁸ At the trial court, Elonis argued that, although intent to convey a threat is not specifically outlined in the statute, the definition of the word "threat" imposes

102. *Id.* Around Halloween time at his work's "Halloween Hung," Elonis posted a photo of himself and a coworker, where Elonis was holding a toy knife to his coworker's neck and titled the caption "I wish." *Id.*

103. *Id.* In response to his firing, Elonis wrote a rap song about his experience, which included the line, "You see, even without a paycheck, I am still the main attraction. Whoever thought the Halloween Hung could be so f**king scary?" *Id.*

104. *Id.* at 728. In this remix, Elonis wrote the line, "Did you know it's illegal for me to say I want to kill my wife . . . It's one of the only sentences that I'm not allowed to say . . . now it was okay for me to say it right there because I was just telling you that it's illegal for me to say I want to kill my wife . . . Um, but what's interesting is that it's very illegal to say I really, really think someone out there should kill my wife . . . but not illegal to say with a mortar launcher." *Id.*

105. *Id.* at 729.

106. *Id.* After the protection order, Elonis once again took to Facebook and wrote: Fold up your [protection-from-abuse order] and put it in your pocket. Is it thick enough to stop a bullet? Try to enforce an Order that was improperly granted in the first place[.] Me [sic] thinks the Judge needs an education on true threat jurisprudence[.] . . . And if worse comes to worse, I've got enough explosives to take care of the State Police and the Sheriff's Department.

Id.

107. *Id.* In his second to last 'lyrical' social media post before indictment, Elonis wrote the lines, "That is it, I've had about enough. I'm checking out and making a name for myself. Enough elementary schools in a ten-mile radius to initiate the most heinous school shooting ever imagined[.] And hell hath no fury like a crazy man in a Kindergarten class. The only question is . . . which one?" *Id.*

108. 18 U.S.C. § 875(c).

an ‘intent’ requirement.¹⁰⁹ The trial court held that it was irrelevant if Elonis intended the postings to be threats, and denied Elonis’s motion to instruct the jury that “the government must prove that he intended to communicate a true threat, and charged him on all accounts, sentencing him to three years, eight months imprisonment.”¹¹⁰

Elonis appealed this decision, alleging the trial court erred in failing to instruct the jury that they must find that Elonis intended his post to be threats in order to convict him.¹¹¹ The United States Court of Appeals for the Third Circuit disagreed with Elonis’s argument, holding that the intent required in his charges only required his intent to communicate words that a reasonable person would view as a threat. Elonis appealed this decision, and the United States Supreme Court granted certiorari.¹¹²

The United States Supreme Court determined that there must be a scienter requirement to convict individuals of a criminal charge because simply communicating something is not what makes it wrongful, but rather that the communication was intended to be threatening in nature.¹¹³ The Supreme Court noted that the appellate court’s holding was premised solely on how his lyrics would be interpreted by a reasonable person; the Court recognized that this “reasonable person” standard is familiar in tort negligence law, but inconsistent with the standard for criminal convictions, which require awareness of some wrongdoing.¹¹⁴ Thus, with no intent to threaten, the Supreme Court held that it may be able to determine if Elonis was reckless in his Facebook postings, but would have to wait for the lower court’s hearing from the parties, and therefore reversed the decision of the United States Court of Appeals for the Third Circuit, and remanded the case for further proceedings consistent with its opinion.¹¹⁵ Although the focus of this case lies in determining if intent is required to convict someone of a criminal charge, this case demonstrates that rap lyrics,

109. *Elonis*, 575 U.S. at 732. In his testimony, Elonis alleges he had no intention to threaten any of the parties indicated in his charge; as he claims he had no intention to carry out any of his alleged threats, he argues his lyrics alone were simply his ‘artistic expression’, similar to that of well known and popular rapper Eminem. *Id.* Specifically, Elonis compared his Facebook raps to Eminem’s song “Kim,” where Eminem brutally tells a story of him killing his wife, Kim, after she has a relationship with another man; in this song, Eminem raps, “You can’t run from me, Kim! It is just us, nobody else. You are only making this harder on yourself. Ha-ha, gotcha! Go ahead, yell! Here, I will scream with you, ‘Ah, somebody help!’ Don’t you get it, b*tch? No one can hear you. Now shut the f*ck up and get what is coming to you. You were supposed to love me. Now bleed, b*tch, bleed!” *Kim*, Genius (May 23, 2000), <https://genius.com/Eminem-kim-lyrics>.

110. *Elonis*, 575 U.S. at 731.

111. *Id.* at 732.

112. *Id.*

113. *Id.* at 734.

114. *Id.* at 737–88.

115. *Id.* at 742.

despite being horrifically brutal or full of violent imagery directed at real people, alone, do not suffice to prove the intent of a defendant in a criminal charge.¹¹⁶

D. *STATE V. SKINNER: THE DIRECT CONNECTION BETWEEN LYRICS AND THE CRIME IN QUESTION TEST—THE “STRONG NEXUS” TEST*

In *State v. Skinner*,¹¹⁷ the Supreme Court of New Jersey held that the appellate court correctly reversed the defendant’s conviction because the violent, profane, and disturbing rap lyrics used as character evidence bore little probative value as to the motive and intent of the charge.¹¹⁸ In *Skinner*, Lamont Peterson was shot several times; Peterson informed police that he was shot by Vonte Skinner.¹¹⁹ Police searched Skinner’s car and found notebooks filled with violent rap lyrics authored by Skinner.¹²⁰ At the trial court, using the notebook as evidence of intent, Skinner was charged with first-degree attempted murder; Skinner requested a preliminary hearing to suppress his notebook as evidence.¹²¹ The hearing determined the lyrics were relevant to prove Skinner’s alleged motive and intent of the charge.¹²² At trial, the State read passages of Skinner’s lyrics to the jury, which depicted “violence, bloodshed, death, and dismemberment” unconnected to Skinner’s attempted murder charge—Skinner was convicted, but appealed.¹²³ The appellate court reversed Skinner’s conviction based upon the admission of his notebook into evidence.¹²⁴ The State filed an appeal alleging the introduction of Skinner’s lyrics allowed the jury to infer Skinner’s motive and intent.¹²⁵

The New Jersey Supreme Court affirmed the appellate court’s reversal of the defendant’s conviction based on the admission of Skinner’s lyrics.¹²⁶ Although some members of society view the rap genre as art, while others view it as distasteful and “descriptive of a mean-spirited culture,” the court recognized that the admission of the lyrics risked “poisoning the jury against the defendant.”¹²⁷ In cadence with

116. Jing Xun Quek, *Elonis v. United States: The Next Twelve Years*, 31 BERKELEY TECH. L. J. 1109, 1121 (2016).

117. 95 A.3d 236 (2014).

118. *State v. Skinner*, 95 A.3d 236, 236 (2014).

119. *Skinner*, 95 A.3d, at 236.

120. *Id.* at 240.

121. *Id.*

122. *Id.* at 240, 241.

123. *Id.* at 241–42.

124. *Id.* at 238. The appellate court determined the lyrics’ prejudicial impact greatly outweighed any probative value, and that “the only logical relevance [of the defendant’s lyrics] was to give additional weight to Peterson’s testimony.” *Id.*

125. *Id.*

126. *Id.* at 238.

127. *Id.*

the modern view of rap lyrics, the court determined that the depictions of criminal behavior in rap lyrics are written in a competitive manner to ‘one-up’ competing rappers, largely exaggerated and often convey “nothing more than artistic bravado.”¹²⁸ In this determination, the court held that articulation of fictional bad acts, wrongful acts, or crimes are not properly evidential, unless the writing displays a “strong nexus” between the specific details of the artistic composition and the circumstances of the underlying offense for which a person is charged, and the probative value outweighs its potential prejudicial effect.¹²⁹

IV. ANALYSIS

A. STIGMAS AND PREJUDICIAL EFFECTS OF RAP MUSIC

1. *The Williams Test, Under the Federal Rules of Evidence, Would Allow Rap Lyrics as Evidence*

To enter rap lyrics as evidence in the courtroom, lyrics can be brought in via the character rules of evidence.¹³⁰ These rules derive from the *Federal Rules of Evidence* (“FRE”), Rule 404.¹³¹ In criminal cases, the state typically will rely on FRE 404(b)(2) to demonstrate that rap lyrics display intent to commit the violation.¹³² Federal Rule of Evidence 404 was drafted to prevent juries from using evidence to convict a defendant based on the defendant’s propensity to commit a certain crime.¹³³ Despite the goal of this rule, it is still possible, and arguably probable, that based on society’s stigmas of the genre, jurors will give undue weight to violent rap lyrics that they assume describe a defendant’s “evil character,” thus restricting the defendant of his or her Sixth Amendment right to a fair trial.¹³⁴ In comparison to other music genres, rap is still a “young” genre, meaning it is highly unlikely the drafters of the *Federal Rules of Evidence* anticipated the eventual use of violent rap lyrics to be used as character evidence, and the stereotypes that would follow the genre.¹³⁵

128. *Id.* at 242.

129. *Id.* at 238.

130. Sripathi, *supra* note 1, at 219.

131. *Id.* Federal Rules of Evidence 404 prohibits the use of evidence of a defendant’s character to prove that they had the propensity to commit the alleged violation—further, the Federal Rules also outlines exceptions to this rule in Federal Rules of Evidence 404(b)(2), which allows character evidence to be admitted if it proves motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident. FED. R. EVID. 404(b)(2).

132. Sripathi, *supra* note 1, at 219. Judges are supposed to ensure the probative value of this evidence outweighs its potential for undue prejudice. *Id.*

133. *Id.* See also KENNETH W. GRAHAM, JR., FEDERAL PRACTICE AND PROCEDURE 5231, a-b (2d ed. 2017).

134. Sripathi, *supra* note 1, at 220.

135. *Id.* at 221.

This process of admitting rap lyrics as evidence under Federal Rules of Evidence 404 can be seen in *State v. Williams*.¹³⁶ In *Williams*, although the defendants argued the admission of the “Double O” music video would create a prejudicial effect on the jury, the Tennessee Court of Appeals rejected this claim and admitted the video as evidence, alleging the prejudicial effects of the video did not outweigh its probative value, and under *Tennessee Rules of Evidence* Rule 404(b), the video helped prove the motive of the defendants, despite the video not referencing the specific violation charged against the defendants.¹³⁷

2. *Stigmas of Rap Music Have Been Shown to Create Prejudicial Effects on Juries When Allowed into Evidence*

As already articulated, the rap genre is the most listened to genre in the United States, but despite this popularity, the genre is still misrepresented and receives many stigmas.¹³⁸ Rather than viewing rap as a form of expression with its primary purposes being entertainment and storytelling, some will view these lyrics as either autobiographical confessions of illegal behavior, or “circumstantial evidence” that proves a defendant’s motive or intent to commit a specific crime.¹³⁹ Although there are examples of rappers who have engaged in illegal activity, this is true of artists in all music genres, and it would be unfairly assumptive to reason that all rappers who use lyrics related to criminal activity are associated with criminal behavior.¹⁴⁰ Two examples of prominent, successful rappers who utilize violent or criminally charged rap lyrics, but do not currently participate in illegal activity, are Rick Ross and Jay-Z.¹⁴¹ Rick Ross, whose legal name is William Leonard Roberts II, has had one of the longest lasting rap careers in the industry.¹⁴² Rick Ross derived his stage name from the notorious Los Angeles

136. No. E2019-02236-CCA-R3-CD, 2022 WL 152516 (Tenn. Crim. App. May 25, 2021).

137. *State v. Williams*, No. E2019-02236-CCA-R3-CD, 2022 WL 152516, at *67 (Tenn. Crim. App. May 25, 2021).

138. *Id.*

139. Charis E. Kubrin & Erik Nielson, *Rap on Trial*, 4 SAGE PUB. J. 185, 197 (2014). In *State v. Skinner*, the New Jersey ACLU filed an amicus brief stating that rap music “has been the focus of the vast majority of cases analyzing the use of fictional expressions as evidence of character, motive and intent in criminal proceedings.” *Id.*

140. *Id.* Rockstar Ozzy Osbourne fought cocaine addiction much of his career; Kurt Cobain overindulged in alcohol and eventually became addicted to heroin; Amy Winehouse sadly lost her life due to alcohol poisoning, and fought drug addiction throughout much of her career. *10 Musicians Who Don't Drink*, RADIO X (Jan. 1, 2023), <https://www.radiox.co.uk/features/x-lists/musicians-who-dont-drink/>. However, there are numerous musicians who have either lived sober lifestyles, or successfully rehabilitated and are now sober; after having a near overdose in 2008, Eminem has been sober since; Beatles sensation Ringo Star, although addicted to drugs and alcohol in the 80s, has been sober for three decades; Rockstar Chris Martin of the band Coldplay is famous for his healthy, drug-free lifestyle. *Id.*

141. Kubrin & Nielson, *supra* note 139, at 199.

142. *Id.*

drug trafficker “Freeway” Rick Ross, and thus depicts himself as a successful drug kingpin in his music lyrics.¹⁴³ However, when not in his “stage persona,” Rick Ross prides himself as a college graduate, having attended Albany State University in Albany, Georgia, and even worked as a prison guard in Florida before beginning his rap career.¹⁴⁴ However, Rick Ross was not quick to admit his history in law enforcement, and only publicly admitted to his law enforcement past when photos of him in uniform came unearthed.¹⁴⁵ Jay-Z on the other hand, did begin his early adulthood selling drugs on the streets of New York prior to his rise into musical fame.¹⁴⁶ However, Jay-Z has moved on from his past, and is now regarded as one of the most charitable celebrities today, citing childhood poverty as the driving factor for his initial life of crime.¹⁴⁷ Jay-Z has publicly criticized the reading of rap lyrics as autobiographical.¹⁴⁸ This criticism is remarkably applicable to the way society has interpreted rap lyrics, and how some courts have guided juries to perceive the rap genre, essentially denying rap music the status of art.¹⁴⁹ Therefore, although statistically one of the most successful and listened to genres, public perception of the genre has generally remained negative, with many still holding the stigma that all rap artists promote and even engage in illegal criminal behavior.¹⁵⁰

Although general negative societal perceptions of rap music are arguably unfortunate, the fundamental issue in determining the prejudicial effects of rap lyrics must be analyzed once these lyrics are admitted into the legal system, specifically, once they enter the courtroom as evidence.¹⁵¹ Due to the negative societal stigmas of rap, numerous studies have been performed to determine the prejudicial effect of rap lyrics in the courtroom.¹⁵²

Dr. Stuart Fischhoff of California State University, Los Angeles, conducted a seminal study on this effect in 1999.¹⁵³ His study examined

143. *Id.*

144. *Id.*

145. *Id.* Rick Ross tried to deny these allegations of his history with law enforcement to protect his stage, “authentic criminal” image, and only confessed to his past when photos and employment documents proving his affiliation surfaced on the celebrity gossip website, *The Smoking Gun*. *Id.* See also, *Screw Rick Ross*, THE SMOKING GUN (July 21, 2008) <https://www.thesmokinggun.com/documents/crime/screw-rick-ross>.

146. Kubrin & Nielson, *supra* note 139, at 199.

147. *Id.*

148. *Id.* When asked for his opinion on the public reading rap lyrics as autobiographical, Jay-Z responded stating he sees this interpretation of the genre as “the failure, or unwillingness, to treat rap like an art, instead of acting like it’s just a bunch of n***as reading out [of] the[ir] diaries.” *Id.*

149. *Id.*

150. *Id.*

151. Sripathi, *supra* note 1, at 222.

152. *Id.*

153. *Id.*

jurors' psychological perceptions of a murder trial defendant when presented with the defendant's rap lyrics as evidence.¹⁵⁴ The study determined that the defendant was viewed more likely to have committed the murder when the jury knew the defendant authored the rap lyrics, than if they did not know he authored the rap lyrics.¹⁵⁵ This study demonstrated the substantial jury bias against rapper-defendants, and suggests the negative stereotypes surrounding the rap genre are exacerbated when rap lyrics are admitted as evidence.¹⁵⁶

Another study was conducted by sociologist and criminology professor Charis Kubrin of the University of California, Irvine.¹⁵⁷ In her study, Kubrin determined that subjects who thought they were reading rap lyrics interpreted them as "very" literal, as opposed to subjects who thought they were reading country music lyrics, despite the lyrics being the exact same.¹⁵⁸ Kubrin concluded that, despite the rap music genre's poetic and creative expression, jurors take these lyrics at face value, and often do not see past the literal interpretation of the lyrics.¹⁵⁹ If rap lyrics are merely viewed as diaries or journals, no special skill or training is necessary to analyze them, therefore juries may hear false or inaccurate testimonies about rap lyrics from witnesses, often law enforcement, who lack the qualifications to accurately assess these lyrics' true meaning.¹⁶⁰

Lastly, in 2017, Adam Dunbar, also from the University of California, Irvine, conducted a study to examine the impact of rap lyrics on jury perceptions.¹⁶¹ This study found that "participants deemed identical lyrics more literal, offensive, and in greater need of regulation" when the lyrics were presented to jurors as rap music lyrics, versus country music lyrics.¹⁶² Additionally, the study showed that artists of the lyrics were viewed "more negatively across a number of dimensions when the lyrics were categorized as rap" as opposed to other genres.¹⁶³ Finally, the study found that subjects suspecting a defendant to be

154. *Id.* See generally Stuart P. Fischhoff, *Gangsta' Rap and a Murder in Bakersfield*, 29 J. APPLIED SOC. PSYCH. 795 (1999).

155. Sripathi, *supra* note 1, at 222. The study also found that the simple authorship of the rap lyrics was "more damning in terms of adjudged personality characteristics than was the actual fact of being charged with murder." *Id.*

156. *Id.*

157. *Id.* at 222–23.

158. *Id.* at 223.

159. *Id.* Kubrin hypothesized this occurs due to prosecutor's presentation of rap music as a "rhymed biography" and their ignoring of its extensive use of metaphor, exaggeration, and the complex narrative perspective of an invented character. *Id.* at 222.

160. Kubrin & Nielson, *supra* note 139, at 199.

161. Sripathi, *supra* note 1, at 223.

162. *Id.* See also Adam Dunbar, *Rap Lyrics as Evidence: An Examination of Rap Music, Perceptions of Threat, and Juror Decision Making*, (2017) (Ph.D. dissertation, University of California, Irvine) (on file with UC Irvine Electronic Thesis and Dissertations).

163. Sripathi, *supra* note 1, at 223.

guilty were more likely to treat rap lyrics as an “admission of guilt” in the trial context.¹⁶⁴

All three of these studies suggest rap lyrics, when brought into court as evidence, due to the negative stigmas of the genre, pose a significant risk of prejudicial assumptions and prejudice among jurors, essentially by guiding them to prematurely determine a defendant’s guilt.¹⁶⁵ It was for these reasons that the court in *State v. Skinner*¹⁶⁶ abandoned the traditional “balancing test,” holding that fictional bad acts depicted in rap lyrics typically carry a potential prejudicial effect that outweighs its probative value.¹⁶⁷

B. THE WILLIAMS TEST CAN CREATE PREJUDICIAL BIAS IN JURIES

It follows that as rap lyrics are prone to prejudicial effects, the admission of rap lyrics under the *Williams* test would limit the court’s ability to arrive at fair and just rulings.¹⁶⁸ Further, as the *Williams* test would leniently allow rap lyrics as evidence, the *Williams* test can create prejudicial bias among juries.¹⁶⁹ In reviewing the academic studies conducted on rap lyrics as evidence, it is likely juries will have premature and unfair notions on a defendant’s innocence, based solely on the fact that the defendant is a rapper.¹⁷⁰ It is likely juries, once aware they are reading rap lyrics as evidence, will interpret these lyrics literally, associating general commentary on crime and violence as a literal depiction of illegal activity.¹⁷¹ It is likely juries will perceive rap lyrics as “admissions of guilt,” despite these lyrics’ lack of reference to the specific violation charged against the defendant.¹⁷² These prejudicial effects counter the legal precedent and modern trend set by previous cases involving rap lyrics as evidence; in *Davidson*, the court emphasized the dangers of placing too much significance on the literal meaning of rap lyrics.¹⁷³ In *Elonis*, the court determined that, despite

164. *Id.*

165. *Id.*

166. 95 A.3d 236 (2014).

167. *State v. Skinner*, 95 A.3d 236, 238 (2014).

168. *Skinner*, 95 A.3d at 230.

169. *State v. Williams*, No. E2019-02236-CCA-R3-CD, 2022 WL 152516, at *70–71 (Tenn. Crim. App. May 25, 2021).

170. *See generally, Williams*, No. E2019-02236-CCA-R3-CD, 2022 WL 152516, at *78; Stuart P. Fischhoff, *Gansta’ Rap and a Murder in Bakersfield*, 29 J. APPLIED SOC. PSYCH. 795, 797 (1999).

171. *See generally, Williams*, No. E2019-02236-CCA-R3-CD, 2022 WL 152516, at *78; Kubrin & Nielson, *supra* note 139, at 199.

172. *See generally, Williams*, No. E2019-02236-CCA-R3-CD, 2022 WL 152516, at *78); Adam Dunbar, *Rap Lyrics as Evidence: An Examination of Rap Music, Perceptions of Threat, and Juror Decision Making* (2017) (PhD dissertation, University of California, Irvine) (on file with UC Irvine Electronic Thesis and Dissertations).

173. *Davidson v. Time Warner*, No. V-94-006, 1997 U.S. Dist. LEXIS 21559, at *1, *64 (S.D. Tex. Mar. 28, 1997).

possible horrific violence depicted in rap lyrics, these lyrics alone do not suffice to prove the intent of a defendant for their specific alleged criminal charge.¹⁷⁴ Thus, to eliminate the potential prejudicial effect the *Williams* test may bring, courts should abandon this test and follow the “Strong Nexus” test utilized in *State v. Skinner*.¹⁷⁵

1. *To Avoid Prejudicial Effects, Courts Should Follow State v. Skinner and Limit the Use of Rap Lyrics as Character Evidence, Unless a “Strong Nexus” is Present Between the Lyrics and the Alleged Violation*

The Court of Criminal Appeals in Tennessee erred in applying *Tennessee Rule of Evidence* Rule 404(b)—the exception to character evidence—to the “Double O” music video created by the defendants in *State v. Williams*,¹⁷⁶ and thus erred in allowing this video into evidence as proof of the defendant’s motive and intent for the defendant’s charges.¹⁷⁷ When determining that the “Double O” music video was correctly admitted into evidence, the Criminal Court of Appeals only used the subjective ‘balancing approach’ to determine that the probative values of the evidence did not outweigh the danger of unfair prejudice.¹⁷⁸ This approach has several glaring issues: (1) with the rampant stigmatization of the rap genre, even judges may be predisposed to these biases surrounding rap music when attempting to implement the subjective ‘balancing approach’ to determine the admissibility of rap lyrics as evidence; (2) the lack of binding precedent and the subjective nature of the ‘balancing approach’ grants judges much leeway when determining admissibility, leaving the door open for inconsistent judicial determinations that may harm rapper defendants inequitably; and (3) the ‘balancing test’ limits defendants’ ability to appeal evidence admissibility concerns, as the standard of review for *Tennessee Rule of Evidence* Rule 404(b) requires an “abuse of discretion” to overrule—courts often defer to judges’ discretion so long as there is no clear harmful abuse in the judge’s discretion. Additionally, due to the fact-sensitive nature of most criminal cases involving rap lyrics, courts will be hesitant to overturn a lower court’s ruling even if the stigmas of rap lyrics are recognized by the court.¹⁷⁹

174. Quek, *supra* note 116, at 1121–23.

175. Sripathi, *supra* note 1, at 233–34.

176. No. E2019-02236-CCA-R3-CD, 2022 WL 152516 (Tenn. Crim. App. May 25, 2021).

177. Sripathi, *supra* note 1, at 223.

178. *State v. Williams*, No. E2019-02236-CCA-R3-CD, 2022 WL 152516, at *71 (Tenn. Crim. App. May 25, 2021).

179. Sripathi, *supra* note 1, at 230–31. *See generally* Kubrin & Nielsen, *supra* note 139, at 202–02.

Considering these issues, and acknowledging the modern trend of rap lyric admissibility as evidence, the Criminal Court of Appeals in Tennessee should have applied a more objective, unified approach in determining the admissibility of rap lyrics as evidence.¹⁸⁰ Luckily, the Supreme Court of New Jersey already utilized such an approach in *State v. Skinner*¹⁸¹ when assessing the admissibility of the reading of the defendant's notebook containing violent rap lyrics he wrote.¹⁸² Here, the court focused on safeguarding against evidence that could potentially 'poison' a jury against the defendant, and applied the "Strong Nexus" test, holding that for rap lyrics to be admissible, the lyrics must have a direct connection between the evidence offered and the specifics of the alleged offense—there must be a strong nexus.¹⁸³

There are several benefits to this approach: (1) this test imposes a 'bright-line' rule for the admissibility of rap lyrics, creating a more objective, uniform judicial process; (2) this test grants defendants more leeway to appeal rulings on rap lyric admissibility, as this test creates a concrete evidentiary standard to exclude rap lyrics as character evidence if the lyrics are not directly connected to the specific offense; (3) this test limits the court's ability to admit rap lyrics with only a slight connection to the alleged violation; (4) this test shifts the focus of this analysis to whether the lyrics were made in direct contemplation of the alleged violation, rather than the discretionary analysis of probative versus prejudicial; and (5) this test does not limit the ability of prosecutors to apply Tennessee Rule of Evidence 404(b) to determine if the rap lyrics in question display intent for the alleged violation, but simply adds an additional step to ensure there is a direct connection between the lyrics and the alleged violation.¹⁸⁴ This approach also follows the modern trend of how courts have generally perceived rap lyrics; in *Davidson v. Time Warner*, it was held that the courts should not place too much significance on the literal meaning of rap lyrics and that, although possibly ridden with violent language, the lyrics still carry storytelling, artistic messages.¹⁸⁵ In *Elonis v. United States*, the U.S. Supreme Court set a precedent that although rap lyrics may be full of brutal, violent imagery, these lyrics alone cannot be used to prove the intent of a defendant.¹⁸⁶

In applying this new standard to review the admission of the "Double O" video, it is plausible the court of appeals would have

180. Sripathi, *supra* note 1, at 231.

181. 95 A.3d 236 (2014).

182. *State v. Skinner*, 95 A.3d 236, 251-52 (2014).

183. *Id.* at 238-39.

184. Sripathi, *supra* note 1, at 223.

185. *Davidson v. Time Warner*, No. V-94-006, 1997 U.S. Dist LEXIS 21559, at *1, *64 (S.D. Tex. Mar. 28, 1997).

186. Quek, *supra* note 116, at 1121-22.

granted relief to the defendants for admitting the music video, as the video only expressed general gang related themes of violence, affiliation, and territorial divide, and contained nothing related to the specific violations the defendants were charged with.¹⁸⁷ With nothing in the video providing probative evidence of the specific crime alleged, it is likely the showing of the music video only sparked prejudicial assumptions among the jury, due to the prominent negative stigmas of the genre.¹⁸⁸ To prevent this, this court of appeals should have applied the “Strong Nexus” test, which would have prohibited this video from being administered as evidence, and thus lessening the likelihood of prejudicial assumptions.¹⁸⁹

V. CONCLUSION

From underground clubs, to topping the music industry charts, despite being a relatively newer genre of music, rap music has cemented its place in the music industry, and it appears rap music is here to stay. Although amassing a large following, the rap genre arguably receives the most criticism from society for its rampant use of violent, criminally related lyrics. Because of this characteristic, rap lyrics have now found their way into our courtrooms, being used by prosecutors to prove defendants’ intent or motive to commit crimes, citing Federal Rule of Evidence 404(b) and using the subjective probative versus prejudicial test to admit these lyrics as character evidence.

This is exactly what happened in *State v. Williams*, as the State presented a rap music video created by the defendants to prove the intent of the defendants in committing their alleged violations. With the growing popularity of the genre, it appears the modern trend is shifting towards a better understanding of the genre—that rap music is a true artistic expression and, although possibly filled with violent themes, rap music, from its origin, was created to share the unheard tales of artists, in a grandiose, passionate manor. In *State v. Williams*, the court of appeals seems to take a step backward from this understanding of the genre, by simply determining the “Double O” music video’s admissibility into evidence using a subjective, inconsistent test, that severely restricts defendant’s abilities to appeal admissibility concerns. In *State v. Skinner*, the New Jersey Supreme Court applied a different approach—the “Strong Nexus” approach. The court determined that the rap lyrics in question must have a direct connection to the specific violation. By utilizing this test, the court can adopt a more

187. *Williams*, No. E2019-02236-CCA-R3-CD, 2022 WL 152516, at *38.

188. *Id.*

189. *Id.*

objective, unified approach, that better allows defendants to appeal admissibility concerns.

Although still publicly scrutinized, this approach better follows the modern legal trend of courts understanding the artistic value of the genre, and not simply taking its lyrics at face value. Therefore, the Criminal Court of Appeals in Tennessee should have applied this “Strong Nexus” test when determining the admissibility of the “Double O” music video. Having already seen this test applied effectively in *State v. Skinner*, courts should begin to apply this test to avoid the prejudicial effects that may arise with the admission of rap music as evidence.

—Bryce Kasamoto, '24[†]

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Mom, Dad, thank you so much for everything. I cannot fully express how grateful I am for your consistent support. You two have stood by me through my ups and downs, and I would not be where I am today without your guidance. Special thank you to our Editor-in-Chief, Taylor Schmidt, who made it possible for me to publish this Note. Lastly, a warm thank you to my law review peers, and more importantly, good friends, Kevin Grossaint and Alex Barbour. Both in and out of the classroom, you two have been role models for me. Although you may not realize, much of my law school success was made possible due to your kindness and moral support; I am beyond blessed to call you two my friends. Lastly, I would like to clarify: this Note was not written to justify the actions made by the Defendants in *State v. Williams*, and my prayers are with the victims and individuals affected by the tragic facts of this case, and the other cases cited in this Note. Instead, this Note was written to address a flaw I see regarding the admission of character evidence. Although I am an aspiring prosecutor, I recognize the dangers of allowing prejudicial evidence into trial. As it is my goal to one day be in a position to uphold the law and keep my community safe, I vow to do so in a statutorily fair and nonprejudicial manner.