



## Legal Alert

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**QUESTION: WHAT IDIOT WOULD WRITE A SONG ABOUT A CRIME THAT HE COMMITTED?**

**ANSWER: THE LYRICS OF THE RAP SONG, “DRUG DEALA” WERE ACTUALLY ADMITTED INTO EVIDENCE AT THE MURDER TRIAL OF DEYUNDREA “KHALI” HOLMES!**

Your statements can be entered into evidence and used against you if they are admissions on your part. Be careful to what you admit in conversations, emails, or even song lyrics. Sometimes the truth will do anything but set you free!

### **The Crime.**

The jury found that “Khali” Holmes plotted with others to steal drugs and money from Kevin “Mo” Nelson. Mo Nelson was a drug dealer operating from a recording studio in Reno, Nevada. Mr. Holmes had a friend lure Mr. Nelson to the parking lot of the recording studio on the pretense of wanting to purchase methamphetamines.

Mr. Holmes and his accomplice were wearing ski masks and black clothes, and they attacked Mr. Nelson and his friend. A fight ensued and Nelson’s pockets were “bunny-eared,” meaning turned inside-out. Mr. Holmes tore off Mr. Nelson’s shirt and chain necklace, and pistol-whipped him. As he tried to drag Nelson into the studio, Holmes removed his ski mask and yelled, “I’m going to shoot this f@#\$ing guy.” He then shot Nelson, who staggered, fell and died.

### **The Admission.**

Three years later, Nevada detectives got a lead and arrested Mr. Holmes in California. “While in jail awaiting extradition, Holmes wrote 18 rap songs, a stanza from one of which was admitted, over objection, at his trial.” *Holmes v. State*, 306 P.3d 415 (Nev. 2013). The jury found Mr. Holmes guilty of robbery and first-degree murder with a deadly weapon.

On appeal, Mr. Holmes said that the trial court should not have admitted the lyrics from “Drug Deala” into evidence. “Drug Deala” was one of the rap

songs written by Mr. Holmes while in jail awaiting extradition to Nevada. The lyrics admitted into evidence were:

But now I'm uh big dog, my static is real large.  
Uh neighborhood super star. Man I push uh hard  
line. My attitude shi- -y ni- -a you don't want to  
test this. I catching slipping at the club and jack  
you for your necklace. F--k parking lot pimping.  
Man I'm parking lot jacking, running through  
your pockets with uh ski mask on straight  
laughing.

(The court quoted the lyrics verbatim at 306 P.3d 418, but I cleaned them up slightly for this article.)

The trial court decided “that the jury could reasonably view the lyrics as factual, not fictional, and that, if it did, the jury could find that the lyrics amounted to a statement by Holmes . . . that tended to prove his involvement in the charged robbery.” Thus, the lyrics would be both relevant and presumed admissible.

The trial court and the Nevada Supreme Court both acknowledged the risks that gangsta rap lyrics might be misunderstood or misused as “bad act” evidence. The Nevada Supreme Court noted:

“Gangsta” is a sub-genre of rap that “purports to reflect life in the inner city,” draws on devices such as metaphor, braggadocio, and exaggeration for effect, and uses words that may be offensive and prone to misinterpretation by jurors and courts unfamiliar with rap.

The Court explained that the stanza from “Drug Deala” included details matching the crime charged.

“Jacking” is slang for robbery, . . . one of the charges Holmes faced. The lyrics’ reference to “jack[ing] you for your necklace” may fairly refer to Holmes stealing Nelson’s chain necklace during the robbery. . . . The lyrics also discuss ski masks, a parking-lot jacking of a “drug deala,” and emptying a victim’s pockets—facts about the crime that the State established . . . .

The Court said that the jury instructions told the jury that it could consider the lyrics as “confessions, admissions or neither.” “So, if the jurors followed the instructions, as we presume they did, . . . they only would have considered the lyrics if they found that the lyrics were autobiographical, like a diary or journal entry, and they would not have allowed their feelings about rap music—good, bad, or indifferent—to influence their verdict.”

In the Holmes case, the court found that the similarities between the lyrics and the facts established by the evidence and the timing of the writing of

the lyrics made the lyrics relevant. “No doubt the lyrics carried the potential for prejudice. But ‘[a]ll evidence offered by the prosecutor is prejudicial to the defendant; there would be no point in offering it if it were not.’”

***What Does This Mean to Me?***

“Admissions” are words or actions that can be received as evidence of the truth of the statements made. “Admissions” are important evidentiary matters in civil cases, as well as criminal.

Before you state anything or admit anything, make sure that it is accurate and cannot be misconstrued against you. The lawyer on the other side would like to get the witness to “sing”—or maybe even “rap.” Don’t be as stupid as Khali Holmes!

If you have questions or concerns about what you should or should not say or do, please call me.

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