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COMM 410: Communication Law

Elonis v. U.S. Case Brief

*Elonis v. U.S.: The Facts of the Case*

Anthony Douglas Elonis was convicted in the Third Circuit of Appeals for several posts he put on Facebook concerning acts of violence against various people including his ex-wife (Count 2/5) and an FBI agent (Count 5/5). Elonis was charged on five counts with “transmitting in interstate commerce communications containing a threat to injure the person of another” and was convicted for Count 2, 3, 4, and 5 for threatening communications. In addition to this, the jury determined that Count 3 and Count 5 were considered “true threats.” Upon his conviction, Elonis was sentenced to forty-four months in prison. The defendant moved to dismiss the indictments as he cited the SCOTUS ruling in *Virginia v. Black*. He argued that there needs to be “a subjective intent to threaten” in order to be considered true threats and that his speech was protected under the First Amendment. The U.S. argued against Elonis’ claim though contending that the code that Elonis was convicted under (18 U.S.C. § 875(c)) only requires the proof of *general* intent to threaten. This case has thus moved on into the Supreme Court and its verdict is under review. The argument now is whether or not Elonis’ threats were “enough to show that a reasonable person would regard the statement as threatening.”

*Elonis v. U.S.: The Ruling and Rationale*

There is not an official court ruling as given by the United States Supreme Court, but the Third Circuit of Appeals is still upholding its conviction against Elonis under 18 U.S.C. § 875(c). The guilty ruling in the lower courts have several rationale based upon each individual count. Indictments were placed and described Elonis’ threatening communication on each of the five counts against him. These were sufficient because they described the violation’s elements, the threat’s nature and subject, and the date of each violation. These indictments did not include subjective intent to threaten, however. The rationale for Count 5 specifically being a true threat is the use of “future tense” words on the post that indicated “an intent to inflict injury in the present or future.” There is also rationale, regarding 18 U.S.C. § 875(c), that Elonis’ threats did travel in interstate commerce. The Supreme Court will address the issue of whether there was a “subjective intent to threaten” within Elonis’ posts.

*Elonis v. U.S.: My View on its Free Speech Significance*

There is no doubt that the Supreme Court’s ruling in *Elonis v. U.S.* will have a huge impact on free speech and specifically free speech on the Internet. It is obvious that all of Elonis’ statements on Facebook were inappropriate and violence-laden, but whether they were true threats is yet to be determined. The issue here goes a lot deeper than just threatening speech in general but whether or not is right for someone to be convicted of threats if they were posting them on the Internet, one of the least regulated forms of content.

Under the true threats test, I completely believe that both Count 3 and Count 5 are legitimate true threats because I believe the statements are enough to show that a reasonable person would regard the statement as threatening. These two Counts are no doubt true threats because I believe the threat was done for the purpose of placing persons in fear of being victimized by unlawful violence *and* was directed to a particular individual/group. I can see how in the other three counts that there was no true threat per se, but it is obvious that Elonis is tip-toeing around his First Amendment rights in the Count 2 post. There is no present or future intent to harm in the other three counts, but I believe they are nonetheless true threats based upon the fact that that Elonis’ wife felt a legitimate threat to her, and her family’s safety. While Elonis’ speech is protected in some capacity, his posts are very obviously directed at specific people, and true threats are not protected speech. I do not think it is right to not consider a statement a “true threat” just because it doesn’t describe the time, place, and method of inflicting harm. What if what the court deemed as protected speech was actually a legitimate threat that was followed through with? If this were the case, a new precedent would no doubt be set concerning the protection of threatening speech.

REFERENCES

Elonis v. United States., 13-937 U.S. \_\_\_ (2014).