

**United States v. Elonis, 730 F.3d 321**  
**3<sup>rd</sup> Circ. Court of Appeals**  
**June 2013.**

**EXCERPT-- FACTS**

In May 2010, Elonis's wife of seven years moved out of their home with their two young children. Following this separation, Elonis began experiencing trouble at work. Elonis worked at Dorney Park & Wildwater Kingdom amusement park as an operations supervisor and a communications technician. After his wife left, supervisors observed Elonis with his head down on his desk crying, and he was sent home on several occasions because he was too upset to work.

One of the employees Elonis supervised, Amber Morrissey, made five sexual harassment reports against him. According to Morrissey, Elonis came into the office where she was working alone late at night, and began to undress in front of her. She left the building after he removed his shirt. Morrissey also reported another incident where Elonis made a minor female employee uncomfortable when he placed himself close to her and told her to stick out her tongue. On October 17, 2010 Elonis posted on his Facebook page a photograph taken for the Dorney Park Halloween Haunt. The photograph showed Elonis in costume holding a knife to Morrissey's neck. Elonis added the caption "I [\*\*3] wish" under the photograph. Elonis's supervisor saw the Facebook posting and fired Elonis that same day.

Two days after he was fired, Elonis began posting violent statements on his Facebook page. One post regarding Dorney Park stated:

*Moles. Didn't I tell ya'll I had several? Ya'll saying I had access to keys for the fucking gates, that I have sinister plans for all my friends and must have taken home a couple. Ya'll think it's too dark and foggy to secure your facility from a man as mad as me. You see, even without a paycheck I'm still the main attraction. Whoever thought the Halloween haunt could be so fucking scary?*

Elonis also began posting statements about his estranged wife, Tara Elonis, including the following: "If I only knew then what I know now, I would have smothered your ass with a pillow, dumped your body in the back seat, dropped you off in Toad Creek, and made it look like a rape and murder." Several of the posts about Tara Elonis were in response to her sister's status updates on Facebook. For example, Tara Elonis's sister posted her status update as: "Halloween costume shopping with my niece and nephew should be interesting." Elonis commented on this status update, writing, [\*\*4] "Tell [their son] he should dress up as matricide for Halloween. I don't know what his costume would entail though. Maybe [Tara Elonis's] head on a stick?" Elonis also posted in October 2010:

*There's one way to love you but a thousand ways to kill you. I'm not going to rest until your body is a mess, soaked in blood and dying from all the little cuts. Hurry up and die, bitch, so I can bust this nut all over your corpse from atop your shallow grave. I used to be a nice guy but then you became a slut. Guess it's not your fault you liked your daddy raped you.*

*So hurry up and die, bitch, so I can forgive you.*

Based on these statements a state court issued Tara Elonis a Protection From Abuse order against Elonis on November 4, 2010. Following the issuance of the state court Protection From Abuse order, Elonis posted several statements on Facebook expressing intent to harm his wife. On November 7 he wrote:

*Did you know that it's illegal for me to say I want to kill my wife?*

*[\*325] It's illegal.*

*It's indirect criminal contempt.*

*It's one of the only sentences that I'm not allowed to say.*

*Now it was okay for me to say it right then because I was just telling you that it's illegal for me to say I want to [\*\*5] kill my wife.*



Tara Elonis testified at trial that she took these statements seriously, saying, "I felt like I was being stalked. I felt extremely afraid for mine and my children's and my families' lives." Trial Tr. 97, Oct. 19, 2011. Ms. Elonis further testified that Elonis rarely listened to rap music, and that she had never seen Elonis write rap lyrics during their seven years of marriage. She explained that the lyric form of the statements did not make her take the threats any less seriously.

On November 15 Elonis posted on his Facebook page:

*Fold up your PFA 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 thinks the judge needs an education on true threat jurisprudence*

***[\*326]** And prison time will add zeroes to my settlement*

*Which you won't see a lick*

*Because you suck dog dick in front of children*

\*\*\*\*

*And if worse comes to worse*

*I've got enough explosives*

*to take care of the state police and the sheriff's department*

*[link: Freedom of Speech, [www.wikipedia.org](http://www.wikipedia.org)]*

This **[\*7]** statement was the basis both of Count 2, threats to Elonis's wife, and Count 3, threats to local law enforcement. A post the following day on November 16 involving an elementary school was the basis of Count 4:

*That's 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?*

By this point FBI Agent Denise Stevens was monitoring Elonis's public Facebook postings, because Dorney Park contacted the FBI claiming Elonis had posted threats against Dorney Park and its employees on his Facebook page. After reading these and other Facebook posts by Elonis, Agent Stevens and another FBI agent went to Elonis's house to interview him. When the agents knocked on his door, Elonis's father answered and told the agents Elonis was sleeping. The agents waited several minutes until Elonis came to the door wearing a t-shirt, jeans, and no shoes. Elonis asked the agents if they were law enforcement and asked if he was free to go. After the agents identified themselves and told him he was free **[\*8]** to go, Elonis went inside and closed the door. Later that day, Elonis posted the following on Facebook:

*You know your shit's ridiculous  
when you have the FBI knockin' at yo' door  
Little Agent Lady stood so close  
Took all the strength I had not to turn the bitch ghost  
Pull my knife, flick my wrist, and slit her throat  
Leave her bleedin' from her jugular in the arms of her partner  
[laughter]  
So the next time you knock, you best be serving a warrant  
And bring yo' SWAT and an explosives expert while you're at it  
Cause little did y'all know, I was strapped wit' a bomb  
Why do you think it took me so long to get dressed with no shoes on?  
I was jus' waitin' for y'all to handcuff me and pat me down  
Touch the detonator in my pocket and we're all goin'  
[BOOM!]*

These statements were the basis of Count 5 of the indictment. After she observed this post on Elonis's Facebook page, Agent Stevens contacted the U.S. Attorney's Office.

## II.

Elonis was arrested on December 8, 2010 and charged with transmitting in interstate commerce communications containing a threat to injure the person of another in violation of [18 U.S.C. § 875\(c\)](#). The grand jury indicted Elonis on five counts of making threatening communications: Count [\[\\*\\*9\]](#) 1 threats to patrons and employees of Dorney Park & Wildwater Kingdom, Count 2 threats to his wife, Count 3 threats to employees of the Pennsylvania State Police and Berks County Sheriff's Department, Count 4 threats to a kindergarten class, and Count 5 threats to an FBI agent.

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Elonis moved to dismiss the indictments against him, contending the Supreme Court held in [Virginia v. Black](#), (2003) that a subjective intent to threaten was required under the true threat exception to the [First Amendment](#) and that his statements were not threats but were protected speech. The District Court denied the motion to dismiss because even if the subjective intent standard applied, Elonis's intent and the attendant circumstances showing whether or not the statements were true threats were questions of fact for the jury. [United States v. Elonis, No. 11-13, 2011 U.S. Dist. LEXIS 121401, 2011 WL 5024284, at \\*3 \(E.D. Pa. Oct. 20, 2011\)](#).

Elonis testified in his own defense at trial. A jury convicted Elonis on Counts 2 through 5, and the court sentenced him to 44 months' imprisonment followed by three years supervised release.

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