Elonis v. United States, No. 13-983, 575 U.S. (June 1, 2015).

Jun 05, 2015 US Supreme Court

Chief Justice Roberts delivered the opinion of the Court.

Federal law makes it a crime to transmit in interstate commerce 'any communication containing any threat . . . to injure the person of another.' 18 U.S. C. §875(c). Petitioner was convicted of violating this provision under instructions that required the jury to find that he communicated what a reasonable person would regard as a threat. The question is whether the statute also requires that the defendant be aware of the threatening nature of the communication, and if not whether the First Amendment requires such a showing.

I

A

Anthony Douglas ***Elonis*** was an active user of the social networking Web site Facebook. In May 2010, ***Elonis***'s wife of nearly seven years left him, taking with her their two young children. ***Elonis*** began 'listening to more violent music' and posting self-styled 'rap' lyrics inspired by the music. The lyrics ***Elonis*** posted [on Facebook] included graphically violent language and imagery. This material was often interspersed with disclaimers that the lyrics were 'fictitious,' with no intentional 'resemblance to real persons.' [App.] 331, 329. ***Elonis*** posted an explanation to another Facebook user that 'I'm doing this for me. My writing is therapeutic.' Id., at 329; see also id., at 205 (testifying that it 'helps me to deal with the pain').

Elonis's co-workers and friends viewed the posts in a different light.

B

A grand jury indicted ***Elonis*** for making threats to injure patrons and employees [at his former place of employment], his estranged wife, police officers, a kindergarten class, and an FBI agent, all in violation of 18 U.S. C. §875(c). In the District Court, ***Elonis*** moved to dismiss the indictment for failing to allege that he had intended to threaten anyone. The District Court denied the motion, holding that Third Circuit precedent required only that ***Elonis*** 'intentionally made the communication, not that he intended to make a threat.' At trial, ***Elonis*** testified that his posts emulated the rap lyrics of the well-known performer Eminem, some of which involve fantasies about killing his ex-wife. In ***Elonis***'s view, he had posted 'nothing . . . that hasn't been said already.' The Government presented as witnesses ***Elonis***'s wife and co-workers, all of whom said they felt afraid and viewed ***Elonis***'s posts as serious threats.

Elonis requested a jury instruction that 'the government must prove that he intended to communicate a true threat.' Id., at 21. See also id., at 267-269, 303. The District Court denied that request. The jury instructions instead informed the jury that

'A statement is a true threat when a defendant intentionally makes a statement in a context or under such circumstances wherein a reasonable person would foresee that the statement would be interpreted by those to whom the maker communicates the statement as a serious expression of an intention to inflict bodily injury or take the life of an individual.' Id., at 301.

The Government's closing argument emphasized that it was irrelevant whether ***Elonis*** intended the postings to be threats 'it doesn't matter what he thinks.' Id., at 286. A jury convicted ***Elonis*** on four of the five counts against him .

Elonis renewed his challenge to the jury instructions in the Court of Appeals, contending that the jury should have been required to find that he intended his posts to be threats. The Court of Appeals disagreed, holding that the intent required by Section 875(c) is only the intent to communicate words that the defendant understands, and that a reasonable person would view as a threat. 730 F. 3d 321, 332 (CA3 2013).

We granted certiorari. 573 U.S. ___ (2014).

II

A

An individual who 'transmits in interstate or foreign commerce any communication containing any threat to kidnap any person or any threat to injure the person of another' is guilty of a felony and faces up to five years' imprisonment. 18 U.S. C. §875(c). This statute requires that a communication be transmitted and that the communication contain a threat. It does not specify that the defendant must have any mental state with respect to these elements. In particular, it does not indicate whether the defendant must intend that his communication contain a threat.

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B

The fact that the statute does not specify any required mental state, however, does not mean that none exists. We have repeatedly held that 'mere omission from a criminal enactment of any mention of criminal intent' should not be read 'as dispensing with it.' Morissette v. United States, 342 U.S. 246, 250 (1952). This rule of construction reflects the basic principle that 'wrongdoing must be conscious to be criminal.' Id., at 252. Although there are exceptions, the 'general rule' is that a guilty mind is 'a necessary element in the indictment and proof of every crime.' United States v. Balint, 258 U.S. 250, 251 (1922). We therefore generally 'interpret[] criminal statutes to include broadly applicable scienter requirements, even where the statute by its terms does not contain them.' United States v. X-Citement Video, Inc., 513 U.S. 64, 70 (1994).

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When interpreting federal criminal statutes that are silent on the required mental state, we read into the statute 'only that mens rea which is necessary to separate wrongful conduct from 'otherwise innocent conduct.'' Carter v. United States, 530 U.S. 255, 269 (2000) (quoting X-Citement Video, 513 U.S., at 72). In some cases, a general requirement that a defendant act knowingly is itself an adequate safeguard. In other instances, however, requiring only that the defendant act knowingly 'would fail to protect the innocent actor.'

C

Section 875(c), as noted, requires proof that a communication was transmitted and that it contained a threat. The 'presumption in favor of a scienter requirement should apply to each of the statutory elements that criminalize otherwise innocent conduct.' X-Citement Video, 513 U.S., at 72 (emphasis added). The parties agree that a defendant under Section 875(c) must know that he is transmitting a communication. But communicating something is not what makes the conduct 'wrongful.' Here 'the crucial element separating legal innocence from wrongful conduct' is the threatening nature of the communication. Id., at 73. The mental state requirement must therefore apply to the fact that the communication contains a threat.

Elonis's conviction, however, was premised solely on how his posts would be understood by a reasonable person. Such a 'reasonable person' standard is a familiar feature of civil liability in tort law, but is inconsistent with 'the conventional requirement for criminal conduct awareness of some wrongdoing.' Staples [v. United States], 511 U.S. [600,] 606-607 [(1994)] (quoting United States v. Dotterweich, 320 U.S. 277, 281 (1943); emphasis added). Having liability turn on whether a 'reasonable person' regards the communication as a threat regardless of what the defendant thinks 'reduces culpability on the all-important element of the crime to negligence,' Jeffries, 692 F. 3d, at 484 (Sutton, J., dubitante), and we 'have long been reluctant to infer that a negligence standard was intended in criminal statutes,' Rogers v. United States, 422 U.S. 35, 47 (1975) (Marshall, J., concurring) (citing Morissette, 342 U.S. 246). See 1 C. Torcia, Wharton's Criminal Law §27, pp. 171-172 (15th ed. 1993); Cochran v. United States, 157 U.S. 286, 294 (1895) (defendant could face 'liability in a civil action for negligence, but he could only be held criminally for an evil intent actually existing in his mind'). Under these principles, 'what [***Elonis***] thinks' does matter. App. 286.

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In light of the foregoing, ***Elonis***'s conviction cannot stand. The jury was instructed that the Government need prove only that a reasonable person would regard ***Elonis***'s communications as threats, and that was error. Federal criminal liability generally does not turn solely on the results of an act without considering the defendant's mental state. That understanding 'took deep and early root in American soil' and Congress left it intact here: Under Section 875(c), 'wrongdoing must be conscious to be criminal.' Morissette, 342 U.S., at 252.

There is no dispute that the mental state requirement in Section 875(c) is satisfied if the defendant transmits a communication for the purpose of issuing a threat, or with knowledge that the communication will be viewed as a threat. In response to a question at oral argument, ***Elonis*** stated that a finding of recklessness would not be sufficient. Neither ***Elonis*** nor the Government has briefed or argued that point, and we accordingly decline to address it. See Department of Treasury, IRS v. FLRA, 494 U.S. 922, 933 (1990) (this Court is 'poorly situated' to address an argument the Court of Appeals did not consider, the parties did not brief, and counsel addressed in 'only the most cursory fashion at oral argument'). Given our disposition, it is not necessary to consider any First Amendment issues.

Both Justice Alito and Justice Thomas complain about our not deciding whether recklessness suffices for liability under Section 875(c). Justice Alito contends that each party 'argued' this issue, post, at 2, but they did not address it at all until oral argument, and even then only briefly.

Justice Alito also suggests that we have not clarified confusion in the lower courts. That is wrong. Our holding makes clear that negligence is not sufficient to support a conviction under Section 875(c), contrary to the view of nine Courts of Appeals. Pet. for Cert. 17. There was and is no circuit conflict over the question Justice Alito and Justice Thomas would have us decide whether recklessness suffices for liability under Section 875(c). No Court of Appeals has even addressed that question. We think that is more than sufficient 'justification,' for us to decline to be the first appellate tribunal to do so.

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The judgment of the United States Court of Appeals for the Third Circuit is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

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Justice Alito, concurring in part and dissenting in part.

In Marbury v. Madison, 1 Cranch 137, 177 (1803), the Court famously proclaimed: 'It is emphatically the province and duty of the judicial department to say what the law is.' Today, the Court announces: It is emphatically the prerogative of this Court to say only what the law is not.

The Court's disposition of this case is certain to cause confusion and serious problems.

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There remains the question whether interpreting §875(c) to require no more than recklessness with respect to the element at issue here would violate the First Amendment. ***Elonis*** contends that it would. I would reject that argument.

It is settled that the Constitution does not protect true threats. See Virginia v. Black, 538 U.S. 343, 359-360 (2003); R.A.V. v. St. Paul, 505 U.S. 377, 388 (1992); Watts [v. United States], 394 U.S. [705,] 707-708 [(1969) (per curiam)]. And there are good reasons for that rule: True threats inflict great harm and have little if any social value. A threat may cause serious emotional stress for the person threatened and those who care about that person, and a threat may lead to a violent confrontation. It is true that a communication containing a threat may include other statements that have value and are entitled to protection. But that does not justify constitutional protection for the threat itself.

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It can be argued that §875(c), if not limited to threats made with the intent to harm, will chill statements that do not qualify as true threats, e.g., statements that may be literally threatening but are plainly not meant to be taken seriously. We have sometimes cautioned that it is necessary to 'exten[d] a measure of strategic protection' to otherwise unprotected false statements of fact in order to ensure enough "breathing space" for protected speech. Gertz v. Robert Welch, Inc., 418 U.S. 323, 342 (1974) (quoting NAACP v. Button, 371 U.S. 415, 433 (1963)). A similar argument might be made with respect to threats. But we have also held that the law provides adequate breathing space when it requires proof that false statements were made with reckless disregard of their falsity. See New York Times, 376 U.S., at 279-280 (civil liability); Garrison, 379 U.S., at 74-75 (criminal liability). Requiring proof of recklessness is similarly sufficient here.

III

Finally, because the jury instructions in this case did not require proof of recklessness, I would vacate the judgment below and remand for the Court of Appeals to decide in the first instance whether ***Elonis***'s conviction could be upheld under a recklessness standard.
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Justice Thomas, dissenting.

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Rather than resolve the conflict, the Court casts aside the approach used in nine Circuits and leaves nothing in its place. Lower courts are thus left to guess at the appropriate mental state for §875(c). All they know after today's decision is that a requirement of general intent will not do. But they can safely infer that a majority of this Court would not adopt an intent-to-threaten requirement, as the opinion carefully leaves open the possibility that recklessness may be enough. See ante, at 16-17.

This failure to decide throws everyone from appellate judges to everyday Facebook users into a state of uncertainty. This uncertainty could have been avoided had we simply adhered to the background rule of the common law favoring general intent. Although I am sympathetic to my colleagues' policy concerns about the risks associated with threat prosecutions, the answer to such fears is not to discard our traditional approach to state-of-mind requirements in criminal law. Because the Court of Appeals properly applied the general-intent standard, and because the communications transmitted by ***Elonis*** were 'true threats' unprotected by the First Amendment, I would affirm the judgment below.
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II

In light of my conclusion that ***Elonis*** was properly convicted under the requirements of §875(c), I must address his argument that his threatening posts were nevertheless protected by the First Amendment.
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Elonis does not contend that threats are constitutionally protected speech, nor could he: 'From 1791 to the present, . . . our society . . . has permitted restrictions upon the content of speech in a few limited areas,' true threats being one of them. R.A.V. v. St. Paul, 505 U.S. 377, 382- 383 (1992); see id., at 388. Instead, ***Elonis*** claims that only intentional threats fall within this particular historical exception.
If it were clear that intentional threats alone have been punished in our Nation since 1791, I would be inclined to agree. But that is the not the case. Although the Federal Government apparently did not get into the business of regulating threats until 1917, the States have been doing so since the late 18th and early 19th centuries. [Citations omitted.] And that practice continued even after the States amended their constitutions to include speech protections similar to those in the First Amendment. [Citations omitted.] State practice thus provides at least some evidence of the original meaning of the phrase 'freedom of speech' in the First Amendment. [Citation omitted.]
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In short, there is good reason to believe that States bound by their own Constitutions to protect freedom of speech long ago enacted general-intent threat statutes.
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Elonis also insists that our precedents require a mental state of intent when it comes to threat prosecutions under §875(c), primarily relying on Watts, 394 U.S. 705, and Virginia v. Black, 538 U.S. 343 (2003). Neither of those decisions, however, addresses whether the First Amendment requires a particular mental state for threat prosecutions.

As ***Elonis*** admits, Watts expressly declined to address the mental state required under the First Amendment for a 'true threat.' See 394 U.S., at 707-708. True, the Court in Watts noted 'grave doubts' about Raganksy [v. United States, 253 F. 643 (7th Cir. 1918)]'s construction of 'willfully' in the presidential threats statute. 394 U.S., at 707-708. But 'grave doubts' do not make a holding, and that stray statement in Watts is entitled to no precedential force.

If anything, Watts continued the long tradition of focusing on objective criteria in evaluating the mental requirement. See ibid.

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In addition to requiring a departure from our precedents, adopting ***Elonis***' view would make threats one of the most protected categories of unprotected speech, thereby sowing tension throughout our First Amendment doctrine. We generally have not required a heightened mental state under the First Amendment for historically unprotected categories of speech. For instance, the Court has indicated that a legislature may constitutionally prohibit "fighting words,' those personally abusive epithets which, when addressed to the ordinary citizen, are, as a matter of common knowledge, inherently likely to provoke violent reaction,' Cohen v. California, 403 U.S. 15, 20 (1971) without proof of an intent to provoke a violent reaction. Because the definition of 'fighting words' turns on how the 'ordinary citizen' would react to the language, ibid., this Court has observed that a defendant may be guilty of a breach of the peace if he 'makes statements likely to provoke violence and disturbance of good order, even though no such eventuality be intended,' and that the punishment of such statements 'as a criminal act would raise no question under [the Constitution],' Cantwell v. Connecticut, 310 U.S. 296, 309-310 (1940); see also Chaplinsky v. New Hampshire, 315 U.S. 568, 572- 573 (1942) (rejecting a First Amendment challenge to a general-intent construction of a state statute punishing "fighting' words'); State v. Chaplinsky, 91 N. H. 310, 318, 18 A. 2d 754, 758 (1941) ('[T]he only intent required for conviction . . . was an intent to speak the words'). The Court has similarly held that a defendant may be convicted of mailing obscenity under the First Amendment without proof that he knew the materials were legally obscene. Hamling [v. United States], 418 U.S. [87,] 120-124 [(1974)]. And our precedents allow liability in tort for false statements about private persons on matters of private concern even if the speaker acted negligently with respect to the falsity of those statements. See Philadelphia Newspapers, Inc. v. Hepps, 475 U.S. 767, 770, 773-775 (1986). I see no reason why we should give threats pride of place among unprotected speech.

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I respectfully dissent.