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Is Facebook 'threat' in Crystal Lake cop case protected speech?

High court hears case similar to LITH man's

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By CHELSEA McDOUGALL - cmcdougall@shawmedia.com

Legal issues before the Supreme Court on the limits of free speech in the digital age could affect a McHenry County case filed last week, legal experts say.

In *Elonis v. United States*, a Pennsylvania man is fighting his nearly four-year sentence for making violent threats against his ex-wife and others in rap lyrics posted to Facebook.

In the local case, authorities say a 24-year-old McHenry County man threatened a [Crystal Lake](#) police officer in the form of a rap video also posted to Facebook.

Gerard X. Golston of [Lake in the Hills](#) faces up to five years in prison on a felony charge of threatening a public official.

"There are obvious First Amendment questions that we need to explore," his public defender Rick Behof said outside court Friday, after a judge denied Golston's request for a reduced bond.

McHenry County Judge Sharon Prather denied a bond reduction because Golston doesn't have permanent residence or a driver's license. He remains jailed in lieu of \$35,000 bond.

The question before Supreme Court justices in the case brought by Anthony Elonis would set a standard which a jury should use to determine whether statements are "true threats" and whether a "reasonable person" would consider the communication to be a serious threat.

The high court has routinely protected free speech, even when it's unsavory or offensive. In separate cases, the Supreme Court justices protected the free speech guarantees of protests at military funerals and in dog-fighting videos.

However, the limits to First Amendment protection stop at threatening speech.

In Golston's case, the nearly five-minute low-production video was posted to his public Facebook profile. The video's final moments created the basis for the felony charge against him.

In slang for shooting a 9 mm weapon, Golston says: "I'm gonna get the nine," and "I'm gonna pop you" and "Officer Dimitri, where the [expletive] you at?"

Officer Dimitri Boulhains was the same officer who issued Golston a seat belt citation in August.

Attorneys now must consider whether Golston's video contains a "true threat." And whether he intended it as such. Furthermore, would a reasonable person take it as serious?

Andrew Koppelman is a Constitutional law professor at Northwestern University. He was unfamiliar with the case before being contacted by the Northwest Herald, and he learned the facts of the case as

they were relayed to him.

Working against Golston, Koppelman said, was that he named a specific officer. However, the law professor questioned whether Golston's threats were truly made in a public way.

Crystal Lake police have said the video was uncovered during a search of public Facebook profiles. And while Golston's Facebook profile was and remains open, his defense attorney could reasonably question whether or not he knew officers were looking at his page, Koppelman said. Did Golston disseminate the video in a way that he could reasonably expect officers to see it?

"The likelihood that this particular police officer would see it doesn't seem high unless the police officer went looking for it," Koppelman said. "[Golston] had no reason to anticipate this was going happen, so it's not even clear this defendant was negligent."

He continued: "It's not possible to threaten somebody with something you write when you don't anticipate that someone is going to see it."

Koppelman offered a hypothetical example. In one scenario he writes a threatening note and locks it in a drawer. That's not a threat, he says. But in another instance, he mails the note to the subject of the threats, intending to cause them alarm.

"I have to have some reason for thinking you're going to see it," he said.

Golston's case is up for a routine court date on Feb. 2.

The Supreme Court heard arguments on *Elonis* in early December.