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THE SUPREME COURT OF NEW HAMPSHIRE

Carroll
Case No. 2023-0498
Citation: State v. Owen, 2026 N.H. 5

THE STATE OF NEW HAMPSHIRE

v.

RANDY OWEN

Argued: November 6, 2025
Opinion Issued: February 10, 2026

John M. Formella, attorney general, and Anthony J. Galdieri, solicitor general (Robert L. Baldridge, assistant attorney general, on the brief and orally), for the State.

Samdperil & Welsh, PLLC, of Exeter (Richard E. Samdperil on the brief and orally), for the defendant.

DONOVAN, J.

[¶1] The defendant, Randy Owen, appeals his conviction, following a jury trial in Superior Court (Attorri, J.), on one count of harassment, see RSA 644:4, I(e) (2016), based upon a voicemail message that he left for a summer camp following an alleged trespass by the camp's counselors onto his property. He argues that the trial court erred by: (1) denying his motion to dismiss based

upon the insufficiency of the evidence; (2) admitting testimony about security measures the camp took in reaction to the voicemail message; and (3) instructing the jury that a conditional statement is a "threat" if it "has a reasonable tendency to create apprehension" in the recipient. We conclude that the trial court erred by admitting the testimony about the camp's response to the defendant's voicemail message and, accordingly, reverse and remand.

I. Facts

[¶2] The jury could have found, or the record supports, the following facts. The defendant owns a house on Farm Island, which is located on Lake Winnipesaukee in Tuftonboro. YMCA Camp Belknap, an overnight summer camp, also owns property on the island. There have been numerous disputes between the defendant and the camp in the past.

[¶3] The defendant often stayed overnight on the island despite his house not having electricity. On June 21, 2021 at approximately 11:00 p.m., he awoke to the sound of breaking branches, voices, and laughter. He looked out the window and saw lights shining into the trees. When he walked outside, he observed a group of people approaching his house. He yelled, screamed, and shined his flashlight toward them. The group turned around and returned to the camp's property on the other side of the island.

[¶4] Following this encounter, the defendant called the Tuftonboro Police Department, but nobody answered. The defendant then called the camp and left the following voicemail message:

> This is Randy Owen from Farm Island. These f**king kids are in my backyard, 10 feet from my house. You better get them the f**k out of here or I will shoot them. You got to keep control of these little bastards. They broke all my windows and they're ruining my camp. You keep them off from my land. They were here, they weren't 15, 20 feet from my house trying to break in and the lights were out and I'm in here, and the little bastards were caught red-handed, so you make sure those little bastards don't come near my camp. I will see you tomorrow.

Based upon this voicemail message, the State charged the defendant with harassment.

[¶5] At trial, the jury heard the recording of the voicemail message, as well as testimony from a Tuftonboro police officer, the directors of the camp, and the defendant. One of the camp directors testified about his reaction to the defendant's voicemail message and the security measures the camp implemented in response. The defendant raised multiple objections to this testimony, arguing that any reactions and security measures taken by the

camp were not relevant and that the evidence's "prejudice greatly outweighs any relevance." The trial court overruled the defendant's objections but instructed the State to lead the witness to avoid detailed testimony about the steps the camp took in response to the defendant's voicemail message.

[¶6] After the State rested, the defendant moved to dismiss, arguing that the State failed to introduce sufficient evidence that the defendant left the voicemail message "[w]ith the purpose to annoy or alarm another" as required by RSA 644:4, I(e). The trial court denied the motion. The jury subsequently convicted the defendant, and this appeal followed.

II. Analysis

A. Sufficiency of the Evidence

[¶7] We first address the defendant's argument that the evidence was insufficient to support his conviction. A challenge to the sufficiency of the evidence raises a question of law, which we review de novo. State v. Seibel, 174 N.H. 440, 445 (2021). When considering such challenges, "we objectively review the record to determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt, considering all the evidence and all reasonable inferences therefrom in the light most favorable to the State." State v. Saintil-Brown, 172 N.H. 110, 117 (2019). "We examine each item of evidence in the context of the entire case, and not in isolation." Seibel, 174 N.H. at 445. "The trier of fact may draw reasonable inferences from facts proved as well as from facts found as the result of other inferences, provided they can be reasonably drawn therefrom." Id. "Because the defendant chose to present a case, we review the entire trial record to determine the sufficiency of the evidence." Id.

[¶8] "[W]hen, as here, evidence of an element is solely circumstantial, the circumstantial evidence must exclude all reasonable conclusions other than the defendant's guilt." State v. Harris, 177 N.H. 473, 484 (2025), 2025 N.H. 32, ¶30. "The proper analysis is not whether the evidence excludes every possible conclusion consistent with innocence, but whether it has excluded all reasonable conclusions other than guilt." Seibel, 174 N.H. at 445. "We do not determine whether the defendant has suggested another possible hypothesis that could explain the events in an exculpatory fashion." Id. "Rather, we evaluate the evidence in the light most favorable to the State and determine whether the alternative hypothesis is sufficiently reasonable that a rational trier of fact could not have found proof of guilt beyond a reasonable doubt." Id. "Where solely circumstantial evidence is at issue, the critical question is whether, even assuming all credibility resolutions in favor of the State, the inferential chain of circumstances is of sufficient strength that guilt is the sole rational conclusion." Id. (quotation and brackets omitted).

[¶9] RSA 644:4, I(e) provides:

> A person is guilty of a misdemeanor, and subject to prosecution in the jurisdiction where the communication originated or was received, if such person . . . [w]ith the purpose to annoy or alarm another, communicates any matter containing . . . a threat to the life or safety of another.

"A person acts purposely with respect to a material element of an offense when his conscious object is to cause the result or engage in the conduct that comprises the element." RSA 626:2, II(a) (2016). When intent is not conceded by the defense, and it is an element of the crime, it is sufficiently at issue to require evidence at trial. State v. Pepin, 156 N.H. 269, 279 (2007).

[¶10] The defendant argues that the State introduced insufficient evidence to prove that he left the voicemail message "[w]ith the purpose to annoy or alarm another," RSA 644:4, I(e), rather than to express "his fear and transient anger." The State counters that the record contains sufficient evidence to establish this element of the harassment charge. We agree with the State.

[¶11] First, the jury heard evidence that the defendant and the camp had an acrimonious relationship. The defendant testified that he had been involved in six lawsuits opposing the expansion of the camp's firing range. He also testified that he believed the camp had blocked him from buying his property for two years and that the camp wanted his land. Specifically, he testified to his belief that the camp's director "knew all about" a plan whereby the counselors "would go in and vandalize that [house] so that [the] prior owner would discount the price and the camp would get the land." From this evidence of past conflicts between the defendant and the camp, the jury could have reasonably inferred that the defendant had a motive to annoy or alarm. See State v. Kim, 153 N.H. 322, 328 (2006) ("Motive has been defined as supplying the reason that nudges the will and prods the mind to indulge in criminal intent.").

[¶12] Second, the jury could have inferred from the language and tone of the voicemail message that the defendant acted with the purpose to annoy or alarm the camp. In the audio recording of the message, which was played three times at trial, the jury heard the defendant yell that the camp "better get [the kids] the f**k out of here or I will shoot them." The defendant also said that the camp needed to "make sure those little bastards don't come near [his house]." Finally, he ended the message by saying: "I will see you tomorrow." A reasonable juror could conclude from the language and tone of the voicemail message that the defendant's purpose in leaving the message was to annoy or alarm the camp.

[¶13] Third, the defendant testified at trial that the camp "should've been alarmed" by the voicemail message. He testified that he "would've said anything" and "would've done anything" because he feared for his life. This testimony also supports a reasonable inference that the defendant left the message to alarm the camp and warn it to keep its staff and campers away from his property, particularly when considered in light of his testimony that he blamed the camp for vandalizing the house prior to his purchase of the property. See State v. Dunbar, 177 N.H. 375, 377, 382-83 (2025), 2025 N.H. 26, ¶¶3, 19 (considering defendant's statement after charged incident that "he could see how [his posts] would put someone at fear" in assessing whether he possessed the requisite mens rea (quotation omitted)). This evidence, viewed in the light most favorable to the State, excludes the conclusion that the defendant left the voicemail message with the purpose to express his "fear and transient anger" and not with the purpose to alarm the camp.

[¶14] In State v. Hanes, we rejected a similar argument. State v. Hanes, 171 N.H. 173, 177-79 (2018). There, the defendant, who had previously complained to the town about the town's snow plowing, left a voicemail message for the town administrator in which he said, among other things, that he would "start shooting these [plow drivers] if they keep this up!" Id. at 175-76. The defendant appealed his conviction for improper influence, arguing that his "purpose was not to cause extreme fear, but rather to use strong words to convey his frustration." Id. at 176-78 (quotations omitted). We disagreed, concluding that the defendant's statement "conveyed threats of violence with the intent of influencing the town administrator's implementation of the town's snow plowing procedures" and that "the evidence was . . . sufficient to establish that the defendant subjectively intended his words to be understood by the recipient as a threat." Id. at 181.

[¶15] Here, the defendant made similarly threatening statements, yelling that the camp "better get [the kids] the f**k out of here or [he] will shoot them." Although he contends that he left the voicemail message only to express "fear and transient anger," we are not persuaded that a reasonable trier of fact was required to believe that contention. The defendant testified that the group likely approached his house, which was dark, without realizing he was inside. He further testified that the group stopped when he yelled at them and that they were leaving his property by the time he called the police and the camp. This testimony supports the inference that the defendant knew any immediate danger had passed by the time he left the voicemail message for the camp. Therefore, viewing the record in the light most favorable to the State, we conclude that the evidence excludes all reasonable conclusions other than that the defendant left the voicemail message with a "purpose to annoy or alarm." RSA 644:4, I(e).

[¶16] The defendant argues that the State introduced insufficient evidence that his words "amounted to a true threat to commit a crime" to

establish that he acted with the purpose to annoy or alarm. In recent cases, we have relied upon federal jurisprudence to define true threats. See, e.g., Dunbar, 177 N.H. at 381-82, 2025 N.H. 26, ¶¶15-16 (discussing true threats under Federal Constitution where argument under State Constitution not developed); Hanes, 171 N.H. at 179 (defendant failed to preserve argument under State Constitution). Here, the defendant does not argue that we should adopt a different definition under the State Constitution. Accordingly, we will rely upon the United States Supreme Court's definition of true threats under the Federal Constitution.

[¶17] "Under the Federal Constitution, true threats are a category of speech not entitled to constitutional protection." Dunbar, 177 N.H. at 382, 2025 N.H. 26, ¶17. "True threats are 'serious expression[s]' conveying that a speaker means to 'commit an act of unlawful violence.'" Counterman v. Colorado, 600 U.S. 66, 74 (2023) (quoting Virginia v. Black, 538 U.S. 343, 359 (2003)). "The speaker need not actually intend to carry out the threat." Black, 538 U.S. at 359-60. "The existence of a threat depends not on 'the mental state of the author,' but on 'what the statement conveys' to the person on the other end." Counterman, 600 U.S. at 74 (quoting Elonis v. United States, 575 U.S. 723, 733 (2015)).

[¶18] Although we agree with the defendant that RSA 644:4, I(e) requires the communication of a true threat, see Dunbar, 177 N.H. at 382, 2025 N.H. 26, ¶17, we nonetheless conclude that the State introduced sufficient evidence. In particular, there was sufficient evidence that the camp understood the defendant's voicemail message as conveying that the defendant "mean[t] to commit an act of unlawful violence." Counterman, 600 U.S. at 74 (quotation omitted). After the State played the audio recording of the defendant's voicemail message, the camp's director testified that he and other staff members were "alarmed, shaken, and scared, and shocked by . . . the tone and accusations that were . . . in [the defendant's] voicemail." The director further testified that he "had to figure out how to mitigate the potential threat that was communicated on that voicemail and manage that safety for the summer of 2021." From this evidence, the jury could have reasonably concluded that the defendant communicated a true threat. See id. In addition, the defendant's testimony that the camp "should've been alarmed" supports a finding that the defendant was at least reckless in issuing the true threat. See id. at 79-80 (speaker must act recklessly in making true threat); Dunbar, 177 N.H. at 382, 2025 N.H. 26, ¶17. Therefore, we conclude that there was sufficient evidence that the defendant communicated "a threat to the life or safety of another" with the prescribed mental state — "to annoy or alarm." RSA 644:4, I(e).

B. Evidentiary Issue

[¶19] Next, we address the defendant's argument that the trial court erred by admitting evidence regarding the camp's response to the voicemail

message. More specifically, the defendant asserts that the camp director's testimony about increased security measures the camp took following the defendant's voicemail message was irrelevant to the issue of the defendant's intent and that the probative value of such evidence was outweighed by a substantial risk of unfair prejudice.

[¶20] We review the trial court's evidentiary rulings for an unsustainable exercise of discretion. State v. Gordon, 161 N.H. 410, 414 (2011). To demonstrate that the trial court exercised unsustainable discretion, the defendant must show that the ruling was clearly untenable or unreasonable to the prejudice of his case. State v. Yates, 152 N.H. 245, 249 (2005). When determining whether an evidentiary ruling constitutes a proper exercise of judicial discretion, we consider whether the record establishes an objective basis to sustain the discretionary judgment made. Harris, 177 N.H. at 480, 2025 N.H. 32, ¶18.

[¶21] Evidence is relevant if "it has any tendency to make a fact more or less probable than it would be without the evidence" and "the fact is of consequence in determining the action." N.H. R. Ev. 401. "Irrelevant evidence is not admissible." N.H. R. Ev. 402. The fact of consequence at issue in this case is whether the defendant acted with the mental state required by RSA 644:4, I(e). "A defendant's intent often must be proved by circumstantial evidence and may be inferred from the defendant's conduct under all the circumstances." State v. Vincelette, 172 N.H. 350, 354 (2019). We have recognized that "the victim's reaction to the threat may be circumstantial evidence relevant to the element of intent." State v. Fuller, 147 N.H. 210, 215 (2001).

[¶22] At trial, the camp's director testified that the staff was "alarmed, shaken, and scared, and shocked by the . . . tone and accusations that were . . . in that voicemail." The defendant objected, arguing that the camp director's reaction was irrelevant. The trial court properly overruled the objection based upon the court's determination that the camp director's reaction to the defendant's voicemail message is circumstantial evidence that is relevant to whether the defendant acted with "the purpose to annoy or alarm another." RSA 644:4, I(e). Moreover, as we have noted, evidence of the camp's reaction is relevant to whether the defendant's statements constituted a threat. See Dunbar, 177 N.H. at 382, 2025 N.H. 26, ¶17; Counterman, 600 U.S. at 74.

[¶23] The camp's director subsequently testified that, in response to the defendant's message, the summer camp stopped using its property on Farm Island in 2021. He described the closure of the camp's portion of the island as "a huge loss" because the camp had previously used part of the island, as well as the nearby portion of the lake, as a "safe area" for kayaking, sailing, canoeing, and swimming. The director also testified that he "had to manage those risks and newly educate the staff on what those were and how to make

sure we never escalated any of those threats that came out of that voicemail." Following the defendant's further objection, the trial court instructed the State to lead the director to testify that the camp ceased its use of Farm Island but not "how much money they spent or anything." The director then explained that the camp "had to increase [its] security management systems in a variety of ways," including communicating "externally with . . . parents of campers."

[¶24] The defendant maintains that the trial court erred by allowing the camp's director to testify about security measures — including the closure of the Farm Island property and increased "security management systems" — the camp took in response to the defendant's voicemail message. He asserts that "whatever probative value [the evidence] may have had, it was substantially outweighed by the emotional and prejudicial impact on the jury."

[¶25] New Hampshire Rule of Evidence 403 provides: "The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence." N.H. R. Ev. 403. "Evidence is unfairly prejudicial if its primary purpose or effect is to appeal to a jury's sympathies, arouse its sense of horror, provoke its instinct to punish, or trigger other mainsprings of human action that may cause a jury to base its decision upon something other than the established propositions in the case." Gordon, 161 N.H. at 414.

[¶26] Unfair prejudice is not a mere detriment to a defendant from the tendency of the evidence to prove guilt, in which sense all evidence offered by the prosecution is meant to be prejudicial. Id. Rather, the prejudice required to predicate reversible error is an undue tendency to induce a decision against the defendant on some improper basis, commonly one that is emotionally charged. Id. at 414-15. Among the factors we consider in weighing the evidence are: (1) whether the evidence would have a great emotional impact upon a jury; (2) its potential for appealing to a juror's sense of resentment or outrage; and (3) the extent to which the issue upon which it is offered is established by other evidence, stipulation or inference. Id. at 415.

[¶27] The probative value of evidence establishing the measures the camp took in response to the defendant's voicemail message was limited in this case. See id. at 415 ("Relevant evidence may have limited probative value."). In light of the audio recording of the voicemail message, testimony regarding the defendant's animosity toward the camp, and the evidence of the camp director's reaction to the defendant's message, evidence of the security measures the camp implemented added little incremental probative value to the State's case. See State v. Mitchell, 166 N.H. 288, 294 (2014) (assigning evidence "little incremental probative value" when the record contained other, more probative evidence relevant to establishing the same proposition).

[¶28] The danger of unfair prejudice, however, was significant. We agree with the defendant that this testimony, describing the security measures the camp took in response to the defendant's message, may have "appeal[ed] to [the jury's] sense of resentment or outrage" — specifically, its disapproval of the defendant's disruption of the camp's activities — rather than allowing the jury to reach its verdict based solely upon the alleged criminal conduct. Gordon, 161 N.H. at 415; see Zola v. Kelley, 149 N.H. 648, 655-56 (2003) (determining under Rule 403 that the trial court erred in admitting evidence because "it could have caused the jury to base its verdict on disapproval of the plaintiff"). As the defendant points out, "it is difficult to imagine how evidence of curtailing children's summer camp activities would not . . . generate resentment among jurors." We conclude that the limited probative value of the testimony regarding the security measures taken in response to the defendant's voicemail message was substantially outweighed by the danger of unfair prejudice. See N.H. R. Ev. 403.

[¶29] Nevertheless, the State argues that any error was harmless beyond a reasonable doubt. To establish harmless error, the State must prove beyond a reasonable doubt that the error did not affect the verdicts. State v. Boudreau, 176 N.H. 1, 11 (2023). This standard applies to both the erroneous admission and exclusion of evidence. Id. We consider the alternative evidence presented at trial as well as the character of the erroneously admitted evidence itself. Id. To determine whether the State has proven beyond a reasonable doubt that an error did not affect the verdict, we must evaluate the totality of the circumstances at trial. Id. at 11-12.

[¶30] The factors that we have considered when assessing whether an error did not affect the verdict include, but are not limited to: (1) the strength of the State's case; (2) whether the admitted or excluded evidence is cumulative or inconsequential in relation to the strength of the State's case; (3) the frequency of the error; (4) the presence or absence of evidence corroborating or contradicting the erroneously admitted or excluded evidence; (5) the nature of the defense; (6) the circumstances in which the evidence was introduced at trial; (7) whether the court took any curative steps; (8) whether the evidence is of an inflammatory nature; and (9) whether the other evidence of the defendant's guilt is of an overwhelming nature. Id. at 12. No one factor is dispositive. Id. This court may consider factors not listed above, and not all factors may be implicated in a given case. Id.

[¶31] The State argues, among other things, that the other evidence of the defendant's guilt was overwhelming. We disagree. As we have discussed, the evidence that the defendant left the voicemail message "[w]ith the purpose to annoy or alarm another," RSA 644:4, I(e), consisted of the audio recording of the voicemail message, testimony regarding past disputes between the camp and the defendant, and testimony by the investigating officer that the defendant wanted the camp's director to be "held accountable." In addition, as

the State observes, the defendant testified that the camp "should've been alarmed" by the message.

[¶32] The defendant denies, however, that he had the requisite mental state when leaving the voicemail message. When describing the circumstances that led him to call the camp, he testified that a group of people were charging toward his house carrying sticks. He testified that he "screamed and yelled" to defend himself and was "shocked, petrified" when he saw people outside. He further testified that these events unfolded quickly, he feared for his life, and he hoped to contact "anyone who could help [him] in that desperate situation." When the police did not answer his call, he called the camp and left the voicemail message to "communicate to stay off [his] property." The defendant's case hinged upon the jury's credibility determination and resolution of any inconsistencies in the defendant's testimony regarding his purpose in leaving the voicemail message. See State v. Woodbury, 172 N.H. 358, 364 (2019).

[¶33] We disagree with the State that the evidence of the defendant's guilt was overwhelming, particularly in light of the conflicting evidence offered regarding the defendant's intent. Having considered the totality of the circumstances, we cannot conclude beyond a reasonable doubt that the trial court's error in admitting the challenged testimony was harmless. See State v. Reynolds, 136 N.H. 325, 328-29 (1992) (not harmless error when prejudicial testimony may have influenced credibility determination upon which case turned). Accordingly, we reverse the trial court's ruling on the admissibility of the evidence of the security measures the camp took in response to the defendant's voicemail message and remand for a new trial.

C. Jury Question

[¶34] Given that we are reversing the defendant's conviction, we need not address the defendant's remaining arguments. In the interest of judicial economy and because the issue is likely to arise on remand, however, we will address the defendant's argument that the trial court erred in its response to a jury question about the definition of the term "threat" and whether a conditional statement constitutes a threat. See State v. Brooks, 177 N.H. 264, 272 (2025), 2025 N.H. 12, ¶19.

[¶35] The response to a jury question is left to the sound discretion of the trial court. Goudreault v. Kleeman, 158 N.H. 236, 250 (2009). We review the court's response under the unsustainable exercise of discretion standard. Id. "To show that the trial court's decision is not sustainable, the defendant must demonstrate that the court's ruling was clearly untenable or unreasonable to the prejudice of his case." State v. Deschenes, 156 N.H. 71, 82 (2007). The party challenging an instruction must show that it was a substantial error that could have misled the jury regarding the applicable law. Goudreault, 158 N.H. at 250. The instruction must be judged as a reasonable juror would probably

have understood it. Id. We review the trial court's answer to a jury inquiry in the context of the court's entire charge to determine whether the answer accurately conveys the law on the question and whether the charge as a whole fairly covered the law of the case. Id.

[¶36] As previously stated, RSA 644:4, I(e) penalizes a person who, "[w]ith the purpose to annoy or alarm another, communicates any matter containing . . . a threat to the life or safety of another." The trial court instructed the jury that:

> [I]n order to convict the Defendant of harassment, the State must prove the following elements beyond a reasonable doubt: One, that the Defendant communicated a threat to the life or safety of another person. And two, that the Defendant acted with the purpose to annoy or alarm another person.

The trial court defined the phrase "acted purposefully" and the term "communicate."

[¶37] During its deliberations, the jury submitted the following written question to the trial court: "Can you please provide the legal definition of a threat? If a conditional statement is made, does that constitute a threat?" The trial court responded: "Yes. The term 'threat' can include a conditional threat, if it has a reasonable tendency to create apprehension that the speaker will act in accordance with its terms." The defendant argues that the trial court inaccurately characterized the law because the question of whether a conditional statement constitutes a threat depends not on the recipient's understanding of the statement but, rather, whether the speaker specifically intended that the statement be understood as a threat.

[¶38] "True threats are serious expressions conveying that a speaker means to commit an act of unlawful violence." Counterman, 600 U.S. at 74 (quotations and brackets omitted). "[A] statement can count as such a threat based solely on its objective content." Id. at 72. Contrary to the defendant's assertion, however, the "existence of a threat depends not on the mental state of the author, but on what the statement conveys to the person on the other end." Id. at 74 (quotations omitted); see also Elonis, 575 U.S. at 733. "Whether the speaker is aware of, and intends to convey, the threatening aspect of the message is not part of what makes a statement a threat." Counterman, 600 U.S. at 74. "When the statement is understood as a true threat, all the harms that have long made threats unprotected naturally follow." Id.

[¶39] In Counterman, the Court determined that for a true threat to fall outside the protections of the First Amendment, the speaker must have been at least reckless in issuing the true threat. See id. at 79-80. Therefore, we

disagree with the defendant that, in response to the jury's question, the trial court should have instructed that, for a statement to constitute a true threat, the speaker must have "specifically intended or desired for the statement to be understood as a real and imminent threat." The State must prove that the "speaker is aware that others could regard his statements as threatening violence and delivers them anyway." Id. at 79 (quotations omitted).

[¶40] Although the defendant argues that "mere 'apprehension' is insufficient to support the level of fear necessary for the jury to find that the defendant will act in accordance with his words," he acknowledges that "apprehension" could "support a conviction for reckless conduct." Apprehension means "[f]ear as to what may happen; dread." Oxford English Dictionary, https://www.oed.com/dictionary/apprehension_n?tab=meaning_and_use#298016 (last visited Feb. 9, 2026). "True threats subject individuals to 'fear of violence' and to the many kinds of 'disruption that fear engenders.'" Counterman, 600 U.S. at 74 (quoting Black, 538 U.S. at 360). Thus, if the recipient reasonably apprehends or fears that the speaker will act in conformity with the speaker's statement — here, threatening to shoot the camp's staff or campers — the recipient also understands that the speaker "means to commit an act of unlawful violence." Id. (quotation omitted); see Elonis, 575 U.S. at 733. In other words, the recipient's fear or apprehension results from his or her understanding that the speaker's statement conveys an intent to commit the act threatened. Accordingly, we conclude that the trial court's use of the word "apprehension" was appropriate within the context of its response to the jury's question.

[¶41] In addition, we conclude that the trial court's response to the jury's second question, which asked whether a conditional statement constitutes a threat, accurately stated the law. Despite its conditional nature, the camp could have understood the defendant's statement — "You better get them the f**k out of here or I will shoot them" — as a serious expression that the defendant meant to "commit an act of unlawful violence." Counterman, 600 U.S. at 74 (quotation omitted); see Hanes, 171 N.H. at 178 (concluding that language of statute criminalizing improper influence did not "preclude threats that are based upon the occurrence of a future event"). As Judge Posner explained, "[m]ost threats are conditional; they are designed to accomplish something; the threatener hopes that they will accomplish it, so that he won't have to carry out the threats." United States v. Schneider, 910 F.2d 1569, 1570 (7th Cir. 1990).

III. Conclusion

[¶42] In sum, we conclude that the trial court erred by admitting testimony regarding the security measures implemented by the camp in response to the defendant's voicemail message and that the error was not

harmless beyond a reasonable doubt. We therefore reverse and remand for further proceedings consistent with this opinion.

Reversed and remanded.

MACDONALD, C.J., and GOULD, J., concurred.