

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A24-1067**

State of Minnesota,
Respondent,

vs.

Todd Damase Ouellette,
Appellant.

**Filed August 18, 2025
Affirmed
Wheelock, Judge**

Hennepin County District Court
File No. 27-CR-21-3354

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Mary F. Moriarty, Hennepin County Attorney, N. Nate Summers, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Peter H. Dahlquist, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Wheelock, Judge; and Halbrooks, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

WHEELLOCK, Judge

In this direct appeal from his judgment of conviction for threats of violence in violation of Minnesota Statutes section 609.713, subdivision 1 (2018), appellant asserts that (1) enforcement of the statute against him infringed on his rights under the First Amendment because his statement was not a true threat, (2) the state failed to provide sufficient evidence to prove the mental-state and reasonable-apprehension elements of the threats-of-violence offense, and (3) the district court abused its discretion by admitting *Spreigl* evidence and denying his requested jury instruction. We affirm.

FACTS

In February 2021, respondent State of Minnesota charged appellant Todd Damase Ouellette with threats of violence in violation of Minn. Stat. § 609.713, subd. 1, for a statement he made in an email he sent to the victim, J.S., on May 7, 2019. J.S. was a senior legal analyst for the Minnesota Bureau of Criminal Apprehension (BCA) in 2019 when Ouellette began emailing her about his request for a copy of his private data held by the BCA. We summarize the evidence received at Ouellette's jury trial and provide the relevant procedural history from the record.

Ouellette's Statements to J.S.

In April 2019, J.S. responded to a request from Ouellette to the BCA for "rules related to police obtaining my DVS driver's license photo" and "the state law on this issue." J.S. responded to Ouellette's request via email and provided copies of the BCA policy on appropriate use of systems and data and the relevant Minnesota statute, both of which were

publicly available. Later that day, J.S. sent Ouellette an electronic copy of the BCA's form for requesting private data, which must be notarized.

At 12:36 a.m. on Friday, May 3, 2019, Ouellette emailed J.S., asking to whom he should "sen[d] a data request . . . regarding MBCA and DVS violating my rights to help [the St. Paul Police Department (SPPD)] retaliate against me and intimidate?" He added, "I want a copy of every f-cking correspondence between MBCA and ANY state or local agency related to me." Ouellette sent three more emails to J.S. that night, including one in which he wrote, "Asking a pissed off tax payer to wade thru an entire law to try and figure out which part is applicable to your decision is absurd." In response to a question Ouellette asked about the notary requirement, J.S. explained that, pursuant to Minn. R. 1205.400, subp. 3 (2023), state agencies develop reasonable procedures to ensure that the person requesting the data is the subject of the data or an authorized representative of the subject.

At 1:12 a.m. on May 7, Ouellette again sent J.S. multiple emails. In his first email, Ouellette said:

I have filed at least 10 data requests. No other agency was a f-cking a—h-le who demanded a notary public charge.

It is bad enough you violated my rights and helped a racist KKK police chief get my DL photo for no reason.

DID YOU REQUIRE A NOTARY PUBLIC FOR HIM?

Less than ten minutes later, Ouellette sent another email:

Thanks for verifying my belief that govt. tools prefer to provoke violence by tax payers instead of just doing their jobs.

I will give you some advice about this world full of angry people who are sick of govt. bullsh-t.

Do not you an email that includes your name.

....

But, anyway, I got your name. I can look you upon the net, just like you looked me up on DVS in violation of my rights.

At 1:27 a.m., Ouellette wrote:

It just amazes me how you govt. scum openly use you name in emails treating taxpayers like sh-t.

*Sure, most mass shooting by angry people occur at schools an businesses, but I would not push my luck if I were you.*¹

I work a customer service job. I can't imagine a situation where I would tell a customer "f-ck you, I won't help you."

(Emphasis added.)

At 1:44 a.m., he wrote:

So, I assume that I did not get thru to you w/ my previous message.

Because, you are a govt. tool. I may as well talk to a brick wall.

I will send you an official request for my info from my personal email.

If you do not believe who I am, you can contact the SPPD chief of police and Commissioner of the state DLI.

¹ The threats-of-violence charge against Ouellette was based on this specific statement.

They are useless scum, but they know who I am. They can verify my identity.

J.S. reported the emails to supervisors at the BCA and remained in communication with them about the emails. Because the BCA is a statewide law-enforcement agency and knew about the threats, J.S. did not separately report the emails to the police department.

The BCA opened an investigation during which special agents from the BCA visited Ouellette's home for a "casual interview." One of the agents testified about this conversation at trial. During the interview, Ouellette admitted that he had sent the emails to J.S., that his email and internet were password-protected, and that he did not share his email or passwords with others. Ouellette told the agent that he "was angry" about J.S.'s email telling him he had to get a notary public, for which he had to pay, to request his data. He further stated during the interview that he had insomnia and would drink beer to fall asleep and that, around seven beers, he would get angry at the government. Ouellette also told the agent that he had "researched every mass shooting that had occurred up until a few years prior . . . and that he knew all the details about them with regards to how they occurred and the weapons that were used." Ouellette's testimony at trial generally was consistent with the agent's testimony. Ouellette testified that he "self-medicated" by using "verbal medication," which he described as him venting his anger or trying to release his energy, frustration, and pain through emails. He also said that, when he drank, he did not care about the effects his statements had on others.

As part of the investigation, one of the BCA agents also interviewed J.S. During trial, the agent testified about the interview and observed that, when J.S. began talking

about the emails, her demeanor went from being confident and speaking at “a good pace” to a slower pace, “her body posture became much more submissive,” and J.S. looked like she was about to cry when explaining her fear. As to the effect Ouellette’s statement had on her, J.S. testified at trial that it was “pretty terrifying” to receive the email about a mass shooting and said, “I don’t think my life will ever be the same.” She also stated that her friends became scared to be around her, that sometimes building security escorted her to her car after work, and that, if she walked to her car alone, building security used the security cameras to watch her walk to her car and ensure she was safe. During her testimony, J.S. refused to articulate what she feared might happen, saying, “I’m afraid to say what I’m afraid of because I feel like I will just be opening myself up to [Ouellette] knowing more ways to get into my head.”

The BCA agent also obtained a search warrant for Ouellette’s email account and found emails “inquiring about purchasing an AK-47.” The agent then contacted the Hennepin County Sheriff’s Office to inquire whether Ouellette had a permit to carry a firearm and learned that, although Ouellette’s permit request was originally denied, he appealed the denial and was granted a permit in December 2020. The agent testified that she believed Ouellette was planning to purchase a firearm.

Ouellette’s Statements to Other Agency Staff

Within a year of the time that Ouellette was in contact with J.S., he was also contacting staff from at least three other state agencies; the state sought the admission at

trial of each of these series of emails and witness testimony about them as *Spreigl* evidence.² The *Spreigl* evidence included the following incidents.

In 2018, the year before Ouellette's emails to J.S. began, Ouellette began emailing the director of the Women, Infants & Children Program (WIC) at the Minnesota Department of Health. Ouellette contacted the program with concerns about processing WIC vouchers. In one email, Ouellette said that he would pull the truth out of her carcass, which the WIC director took as a threat to her safety. The WIC director testified that she had filed a police report against Ouellette because of his emails, explaining, "I felt threatened for my personal safety because of your messages." She testified that she understood that the reasons Ouellette sent her threatening emails was because he was unhappy with the answers she was providing him.

Around the same time that he emailed J.S. in 2019, Ouellette emailed an attorney at the Minnesota Department of Labor and Industry (DLI) who had been assigned to assist agency staff with Ouellette's requests and communications. Ouellette originally contacted the DLI to obtain data related to his termination from his employment, but his communications included language that raised concerns among the DLI staff. The DLI attorney testified that staff "became upset and concerned about some of the emails they were receiving" and that Ouellette's emails "were sometimes confusing, . . . rude,

² "*Spreigl* evidence" refers to evidence of another act that is not part of the conduct for which the defendant is charged and cannot be used to prove the defendant's action in conformity with character, but may be admitted for limited purposes such as to prove intent, motive, or absence of mistake; the name is derived from *State v. Spreigl*, 139 N.W.2d 167 (Minn. 1965), and the rule is encompassed in Minn. R. Evid. 404(b).

disrespectful, angry, and then some of the language became violent, and so that was upsetting to me and . . . other staff members there.”

In March 2019, Ouellette emailed the DLI attorney, saying:

I am at the point where I am thinking about sending a “threat” to you so you have no choice but to . . . file a complaint against.

I will not plead guilty under this hypothetical scenario.

. . . .

So, consider this email to be “evidence.” I want to know why the f-ck the DFL is covering up my personne[l] file

. . . .

Oh and to any juror who reads this email. This is how the DFL rolls.

They lie, cover up, jerk chains, and force citizens to use the “nuclear option.”

In June 2019, Ouellette sent the DLI attorney several more emails, one of which included the following statements:

Soooo, Am I correct in my understanding that the only way ANY MN tax payer can get the attention of your agency, is to

A. “THREATEN” YOU AND FORCE YOU INTO COURT TO TESTIFY BEFORE A JURY.

B. BRING AN AK47 OR AR-15 TO YOUR BUILDING AND KILL 20 PEOPLE.

These emails caused the attorney and other staff to worry that Ouellette would do “something violent,” and the DLI leadership filed police reports and discussed changes to the building’s security.

Later that year, Ouellette emailed staff at the Minnesota Department of Public Safety (DPS). Ouellette first contacted DPS about a problem with his vehicle registration tabs, and the DPS director became involved when her staff reported that they were receiving “concerning” emails. She testified that Ouellette’s statements did not seem “flippant” to her because they escalated over time and were “serious.” At the end of August 2019, Ouellette sent the director an email with the subject line, “Put a bullet in your mouth,” that said, “I think you parasites need to go buy a pistol, and a bullet, stick the barrel in your mouthes, and pull the trigger. . . . Go kill yourselves.” Ouellette continued to email the director over the next several months, and in November 2019, he expressed his hope that she and others would be sent “to a horrible, concentration camp” and described what would happen to them there while he watched. The director informed Ouellette that she would report his behavior to law enforcement if he continued using threatening or abusive statements, and she ultimately notified law enforcement because she was concerned that Ouellette would come to the office building and “harm somebody.” The director and her staff began taking additional safety measures after receiving these emails from Ouellette.

District Court Proceedings

Turning to the relevant procedure of this case, a few months after Ouellette was charged, he submitted pretrial motions in which he argued in part that the charging statute infringed on his right to free speech.³ The district court held a hearing, rejecting Ouellette’s

³ Throughout the proceedings, Ouellette vacillated between representing himself and appearing represented by counsel until September 2023. Ouellette appeared

free-speech arguments and determining that the statute was not overbroad and was constitutional as applied to this case. The state then submitted a notice that it intended to introduce as *Spreigl* evidence Ouellette's contacts with staff from other state agencies. Ouellette opposed the motion. After a hearing on the state's motion, at which Ouellette was self-represented, the district court ruled that the testimony and emails with the DLI attorney and the DPS director were admissible but declined to admit the WIC director's testimony and emails, finding that this evidence was more prejudicial than probative. A few years later, and only a few months before trial was to start, Ouellette requested permission to call the WIC director in his case-in-chief, and the district court cautioned, "I am not sure it is a great idea." The district court confirmed that the state did not object to the witness and explained to Ouellette that if he called the WIC director, the state would also be allowed to question her. Thereafter, the district court admitted the WIC director's testimony and emails as *Spreigl* evidence.⁴

The state called J.S., the BCA agent, the DLI attorney, and the DPS director. Prior to the DLI and DPS witnesses' testimonies, the district court provided a cautionary *Spreigl* instruction. For his case, Ouellette called the WIC director and testified on his own behalf, waiving his right not to testify. When reviewing the evidence that he hoped to admit during his testimony, Ouellette explained to the district court that his theory of defense was that

self-represented for the remainder of the pretrial hearings and through the jury trial, though he requested, and was granted, advisory counsel for trial.

⁴ On appeal, Ouellette does not challenge the admission of the evidence from the WIC director.

his comments to J.S. were “advice on customer service, voter retention, and public safety.” Ouellette stated that he was concerned that “some crazy person in the future—not [him], but just somebody, because there’s a lot of crazy people in this world—[would] come down there . . . and do something bad.”

The jury found Ouellette guilty of threats of violence. The district court sentenced Ouellette to 12 months’ imprisonment, stayed for five years of probation, and ordered him to serve 120 days in jail.

Ouellette appeals.

DECISION

Ouellette presents three arguments on appeal: (1) the charging statute violates his First Amendment rights as applied to his email to a government employee about her work; (2) the state failed to provide sufficient evidence to prove the mental-state and reasonable-apprehension elements of the threats-of-violence offense; and (3) the district court abused its discretion by admitting the *Spreigl* evidence and by not modifying the corresponding jury instruction.⁵ We address each argument in turn.

I. Minnesota Statutes section 609.713, subdivision 1, did not violate Ouellette’s First Amendment rights as applied to this case.

Ouellette first asserts that the threats-of-violence statute violated his constitutional rights as applied because his emails were protected political speech sent to a government employee with the purpose of redressing harms done to him and because the statement

⁵ Ouellette also submitted a pro se supplemental brief, but because the brief lacks legal argument and is not supported by authority, these arguments are forfeited. *See State v. Krosch*, 642 N.W.2d 713, 719 (Minn. 2002).

upon which the state based its charge—“Sure, most mass shooting by angry people occur at schools an businesses, but I would not push my luck if I were you”—was vague, hyperbolic, conditional, and protected political speech and, therefore, not a true threat.

The state argues that the statement was a true threat and could not have been political speech because J.S. was an employee, not a public official, and Ouellette’s private data was not a matter of public concern. The state asserts that the context of the statement demonstrates that it was a true threat because, first, mass shootings are a pervasive reality in this country and, second, Ouellette’s emails show that his anger escalated over time and he obtained a permit to possess a firearm and took steps to purchase a firearm.⁶ Additionally, the state argues that the statement was not vague or hyperbolic because Ouellette claimed to be an expert on mass shootings, identified a specific individual as his target, and communicated with the target using her business account. Because Ouellette’s statement was a true threat, the state concludes, it did not enjoy the protections afforded by the First Amendment.

Appellate courts “review questions of law, including the constitutionality of statutes, de novo.” *Mrozinski*, 971 N.W.2d at 238. Statutes are presumed constitutional and will be stricken only when absolutely necessary. *Id.* The First Amendment states, “Congress shall make no law . . . abridging the freedom of speech.” U.S. Const. amend. I.

⁶ Because the evidence of Ouellette’s steps to obtain a firearm was discovered after Ouellette made the statement that is the basis for the threats-of-violence charge, that evidence is irrelevant to the issue of whether Ouellette’s statement created a reasonable apprehension that he would carry through with his threat, *see State v. Mrozinski*, 971 N.W.2d 233, 239 (Minn. 2022), and we do not consider it.

The First Amendment applies to the states through the Fourteenth Amendment and is intended to allow “free trade in ideas—even ideas that the overwhelming majority of people might find distasteful or discomforting.” *Virginia v. Black*, 538 U.S. 343, 358 (2003) (quotation omitted). First Amendment protections are not absolute, and “the government may regulate certain categories of expression consistent with the Constitution.” *Id.*

The First Amendment does not protect “true threats.” *Black*, 538 U.S. at 359. True threats are not protected speech because they have “a corrosive effect on society” by allowing “bullies who espouse violence to intimidate others.” *Mrozinski*, 971 N.W.2d at 246. Prohibiting true threats also “protects individuals from the fear of violence and from the disruption that fear engenders, in addition to protecting people from the possibility that the threatened violence will occur.” *Black*, 538 U.S. at 359-60 (quotations omitted).

“A threat is a declaration of an intention to injure another or [their] property by some unlawful act.” *State v. Schweppe*, 237 N.W.2d 609, 613 (Minn. 1975). “A communication is threatening when, considered in context, it creates reasonable apprehension that the defendant will carry through with or act on the threat.” *Mrozinski*, 971 N.W.2d at 239. True threats can be distinguished from protected speech only by considering the purported threat in context, including by considering the intention of the speaker, to ensure that the communication is “more than the mere utterance of threatening words.” *Id.* at 243-44 (quotation omitted). In *Mrozinski*, the Minnesota Supreme Court held that the threats-of-violence statute is applied constitutionally when it punishes threats of violence

made with the purpose to terrorize another or “reckless speech that is a true threat” when considered in context. *Id.* at 239, 246.

“Intimidation . . . is a type of true threat, where a speaker directs a threat to a person or group of persons with the intent of placing the victim in fear of bodily harm or death.” *Black*, 538 U.S. at 360. A defendant acts recklessly, however, when they grasp that they are “not engaged in innocent conduct” and deliver the statement despite recognizing “the substantial likelihood that someone could regard [their] statement[] as a threat.” *Id.* at 244 (quotations omitted). The defendant need not intend to carry out their threat, *Black*, 538 U.S. at 359-60, and the defendant need not intend for the threat to elicit fear or cause harm, *Mrozinski*, 971 N.W.2d at 244. “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 v. Colorado*, 600 U.S. 66, 74 (2023). Indeed, “[t]he 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.* (quotations omitted). Because the defendant’s mental state may simply be recklessness, satisfying that element of the threats-of-violence statute requires only that the state show “that the defendant consciously disregarded a substantial risk that [their] communications would be viewed as threatening violence.” *Id.* at 69.

An “as-applied” challenge requires an appellant to show that the statute is unconstitutional as applied to the facts and circumstances of their case. *Rew v. Bergstrom*, 845 N.W.2d 764, 778 (Minn. 2014). Ouellette asserts that the circumstances of his case show that his conduct was protected political speech when considered in context because it was speech directed at government employees with the purpose of redressing an injury.

“Statements criticizing official conduct do not lose constitutional protection merely because they are criticisms.” *Fine v. Bernstein*, 726 N.W.2d 137, 144 (Minn. App. 2007), *rev. denied* (Minn. Apr. 17, 2007). However, protections for political speech do not extend to every statement made to any government employee or public official because, as stated above, the right to free speech is not absolute. *Id.*; *see Counterman*, 600 U.S. at 81 (stating that true threats, even if political, are “further from the First Amendment’s central concerns” than other unprotected speech, that political “advocacy” will not always be protected, such as when it is inciting, and that mental state must be proved by the state in an effort to protect speech that is not a true threat). Consider that, in *Watts v. United States*, the United States Supreme Court was asked whether a subjunctive statement describing the conditions under which the speaker would kill the president was a true threat, and it concluded that the context of the statement, which was uttered at a political rally opposing the president’s order for a military draft, demonstrated that the statement was not a true threat. 394 U.S. 705, 706, 708 (1969). Therefore, even if Ouellette’s statement was political simply because it was made to a government employee with the purpose of redressing an injury, the context of the statement controls whether the statement is protected political speech.

The context of Ouellette’s conduct shows that his statement fits within the true-threats exception to the First Amendment’s protections. When J.S. did not provide Ouellette with information that he wanted and believed she had, he began to express to her his frustration, then aggression, then hatred toward her personally. He conveyed to her that he knew a lot about mass shootings, that he knew poor customer service can result in mass

shootings at businesses, and that he believed she was providing the kind of poor customer service that can result in mass shootings. Ouellette made the statement to obtain the result he wanted, which was to receive his data without paying the notary-public fee or, in the alternative, to “verbally medicate” by expressing his anger. Ouellette’s testimony supports a conclusion that he recklessly made the statement because his testimony conveyed that he had thought about whether his statements were threatening but was not concerned about and consciously disregarded a substantial risk that his mass-shooting statement would cause J.S. reasonable apprehension that Ouellette intended to harm her. Prior to Ouellette’s threatening email to J.S., another government employee had filed a police report based on a similar email Ouellette had sent to her when she and her staff did not provide his desired response to his request for services. These facts are not consistent with Ouellette’s statement being “vague” or “hyperbolic,” as Ouellette asserts, but rather show that he created a reasonable apprehension that he would act on the threat, especially when considered in context.

Ouellette argues that his threat was conditional and, thus, that it was not a true threat. Although the conditional nature of a threat is a factor in determining whether a statement is a true threat, *see Watts*, 394 U.S. at 707-08, any possibility that Ouellette’s threat was conditional was eliminated when Ouellette sent his next email, which stated, “So, I assume that I did not get thru to you w/ my previous message. Because, you are a govt. tool. I may as well talk to a brick wall.” His follow-up email made clear that any condition that may have been present in the previous statement through the use of “if I were you,” was

void because Ouellette conveyed that he did not believe J.S. would comply with his demand.

The context of Ouellette's statement demonstrates that he told an individual person at her place of work that she provided him with poor service, that he knew a lot about mass shootings, and that mass shootings tend to be the result of poor service provided at places of work. The message was preceded by an increasingly aggressive and hateful series of contacts directed at the victim personally. The effect of Ouellette's statement was to cause J.S. to be constantly "on guard" and afraid that he would do "something violent," and Ouellette had reason to know this would be the effect of his statement. Another witness testified she had filed a police report in response to a similar email from Ouellette. Because Ouellette's statement was a true threat, it falls outside the protections of the First Amendment, and we conclude that application of the threats-of-violence statute did not infringe on Ouellette's First Amendment rights.

II. The state provided sufficient evidence to prove Ouellette made threats of violence.

Ouellette argues that the state failed to prove two of the elements necessary to establish his guilt: mental state and reasonable apprehension. Specifically, as to mental state, he asserts that the state did not establish that he made his statement with the purpose to terrorize or a conscious disregard of a substantial and unjustifiable risk that his statement would cause extreme fear because the circumstances are consistent with his frustration with J.S. and that he testified that he did not intend to terrorize or threaten her. And as to reasonable apprehension, he asserts the state did not establish that his statement created a

reasonable apprehension that he would act on the threat because J.S.’s delay in reporting the threat demonstrates that she did not feel threatened.

The state argues that the circumstances proved, including the context of the statement, supports the jury’s findings on both elements. It further asserts that Ouellette’s closing argument demonstrates his mental state because “Ouellette said that he knew what he was doing” but believed he had not “crossed the line” into criminal conduct.

Whether a defendant’s conduct meets the definition of a particular offense presents a question of statutory interpretation that appellate courts review de novo. *State v. Hayes*, 826 N.W.2d 799, 803 (Minn. 2013). When an appellant argues that the state provided insufficient evidence, appellate courts “carefully examine the record to determine whether the facts and the legitimate inferences drawn from them would permit the jury to reasonably conclude that the defendant was guilty beyond a reasonable doubt of the offense of which he was convicted.” *State v. Griffin*, 887 N.W.2d 257, 263 (Minn. 2016) (quotation omitted). Appellate courts view the evidence “in the light most favorable to the verdict” and assume that the jury “disbelieved any evidence that conflicted with the verdict.” *Id.* The verdict will not be overturned if the jury could “reasonably have found the defendant guilty of the charged offense” given the presumption of innocence and the state’s burden of proof. *Id.*

The standard of review that appellate courts apply when evaluating the sufficiency of the evidence depends on whether direct or circumstantial evidence supports the element of the offense challenged on appeal. *State v. Stein*, 776 N.W.2d 709, 714 (Minn. 2010).

Because the state does not argue that it proved these elements entirely with direct evidence, we apply the circumstantial-evidence standard of review.

A conviction based on circumstantial evidence receives heightened scrutiny. *State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010). When reviewing circumstantial evidence, appellate courts conduct a two-step inquiry. *State v. Harris*, 895 N.W.2d 592, 598 (Minn. 2017). The first step is to identify the circumstances proved. *Id.* Appellate courts “defer to the jury’s acceptance of the proof of these circumstances and rejection of evidence in the record that conflicted with the circumstances proved by the State.” *State v. Silvernail*, 831 N.W.2d 594, 598-99 (Minn. 2013) (quotations omitted). On appeal, only circumstances that are consistent with the verdict are considered “because the jury is in the best position to evaluate the credibility of the evidence.” *Id.* at 599. In step two, appellate courts “independently consider the reasonable inferences that can be drawn from those circumstances, when viewed as a whole.” *Harris*, 895 N.W.2d at 598. The consideration “must determine whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis except that of guilt.” *Silvernail*, 831 N.W.2d at 599 (quotations omitted). With this framework in mind, we turn to applying the circumstantial-evidence standard to both disputed elements of Ouellette’s conviction: mental state and reasonable apprehension.

Mental State

The threats-of-violence statute has two different mens rea—the purpose to terrorize or the reckless disregard of the risk of causing terror—either of which, when proved,

satisfies the mental-state element of the threats-of-violence offense. A person recklessly makes threats of violence, in violation of section 609.713, subdivision 1, when

(1) through words or actions, she communicates an intention to injure another or their property; (2) the threat is to commit a statutorily defined crime of violence; (3) in context, those words or conduct create a reasonable apprehension that she will follow through with or act on the threat; and (4) she makes the violent threat in conscious disregard of a substantial and unjustifiable risk that her words or conduct will cause extreme fear.

Mrozinski, 971 N.W.2d at 240. A person makes a threat of violence with intent to terrorize when their words or conduct have the “aim, objective, or intention” to cause extreme fear. *State v. Smith*, 825 N.W.2d 131, 136 (Minn. App. 2012), *rev. denied* (Minn. Mar. 19, 2013).

Because the state needed to prove just reckless disregard of a substantial risk of causing terror and not that Ouellette acted with the specific purpose to cause terror, we consider whether the state proved reckless disregard. The supreme court has construed recklessness as a “conscious disregard of a substantial and unjustifiable risk.” *Mrozinski*, 971 N.W.2d at 240. Within this statute, “to act ‘in a reckless disregard of the risk of causing such terror,’ a defendant must be aware of a substantial and unjustifiable risk that [their] words or actions will cause terror in another, and [they] must act in conscious disregard of that risk.” *Id.* (quoting Minn. Stat. § 609.713, subd. 1). Because conscious disregard is a mental state, it is generally proved through circumstantial evidence. *See State v. Jones*, 4 N.W.3d 495, 501 (Minn. 2024) (explaining that mental state may be proved through circumstantial evidence); *State v. Coleman*, 957 N.W.2d 72, 80 (Minn. 2021) (holding that

reckless disregard of human life is a mental state). Here, the state proved the following circumstances to support that Ouellette acted with reckless disregard:

- Ouellette said that he had researched every mass shooting that had occurred and knew the details about how they were done and the weapons used;
- Ouellette was angry that J.S. told him he needed to get a notary public to confirm his identity before he could receive his data from the BCA;
- At 1:12 a.m. on May 7, Ouellette again began sending J.S. multiple emails. In his first email, Ouellette said:

I have filed at least 10 data requests. No other agency was a f-cking a—h-le who demanded a notary public charge.

It is bad enough you violated my rights and helped a racist KKK police chief get my DL photo for no reason.

DID YOU REQUIRE A NOTARY PUBLIC FOR HIM?

- Less than ten minutes later, Ouellette sent another email:

Thanks for verifying my belief that govt. tools prefer to provoke violence by tax payers instead of just doing their jobs.

I will give you some advice about this world full of angry people who are sick of govt. bullsh-t.

Do not you an email that includes your name.

....

But, anyway, I got your name. I can look you upon the net, just like you looked me up on DVS in violation of my rights.

- At 1:27 a.m., Ouellette wrote:

It just amazes me how you govt. scum openly use you name in emails treating taxpayers like sh-t.

*Sure, most mass shooting by angry people occur at schools and businesses, but I would not push my luck if I were you.*⁷

I work a customer service job. I can't imagine a situation where I would tell a customer "f-ck you, I won't help you." (Emphasis added.)

- At 1:44 a.m., he wrote:

So, I assume that I did not get thru to you w/ my previous message.

Because, you are a govt. tool. I may as well talk to a brick wall.

I will send you an official request for my info from my personal email.

If you do not believe who I am, you can contact the SPPD chief of police and commissioner of the state DLI.

They are useless scum, but they know who I am. They can verify my identity.

- J.S. was afraid as a result of Ouellette's statement, asking security to watch her walk to her car or escort her to her car after work.
- Government-employee recipients of emailed statements like the statement Ouellette emailed to J.S. testified that they had received emails from Ouellette seeking data or services and threatening or wishing violence on them and their staff when he did not like their responses. Ouellette emailed these statements to the other recipients both before and after his statement to J.S.
- Prior to Ouellette's threatening email to J.S., another government employee had filed a police report based on a

⁷ The threats-of-violence charge against Ouellette was based on this specific statement.

similar email Ouellette had sent to her when she and her staff did not provide his desired response to his request for services.

Having identified the circumstances proved, we next consider the reasonable inferences that can be drawn from them when viewed as a whole. Given the circumstances proved here, we conclude that the only rational hypothesis is guilt. As stated above, the mental-state element required that Ouellette make the threats “in a reckless disregard of the risk of causing such terror.” *See* Minn. Stat. § 609.713, subd. 1. A reckless mental state requires “that the defendant consciously disregard[] a substantial risk that his communications would be viewed as threatening violence.” *Counterman*, 600 U.S. at 69. When a defendant “recklessly communicates threats of violence,” they understand that they are “not engaged in innocent conduct” and they recognize “the substantial likelihood that someone could regard [their] statements as a threat,” but they nonetheless deliver the statement without justification. *Mrozinski*, 971 N.W.2d at 244 (quotations omitted). Recklessness requires that the speaker “consciously disregard[] a substantial and unjustifiable risk that the conduct will cause harm to another” and have an “insufficient concern with risk, rather than awareness of impending harm.” *Counterman*, 600 U.S. at 79 (quotation omitted).

The only reasonable inferences from the circumstances here are that Ouellette disregarded a substantial risk that his statement to J.S. would be viewed as threatening violence. The circumstances proved show that he was aware of the context of mass shootings and that another government employee had filed a complaint with law enforcement about a similar statement in a similar context. The evidence also demonstrates

that Ouellette knew about mass shootings, how to effectuate them, and that they cause people terror, yet he was not concerned about the risk that that his statement would have this effect on others. We discern no reasonable inferences that are not consistent with guilt. Because the circumstances proved and the reasonable inferences from them are consistent with the determination that he acted with recklessness and are inconsistent with any rational hypothesis other than guilt, the state provided sufficient evidence to prove that Ouellette acted with reckless disregard of the risk of causing terror.

Reasonable Apprehension

The state also needed to prove that Ouellette's statement created a reasonable apprehension that he would act on it. Here, the state proved the following circumstances to support this element:

- Ouellette sent his first string of emails to J.S. describing himself as "a pissed off tax payer," describing her email providing him with information as "absurd," and describing law-enforcement officers as "crooked" and "racist" and "scum bags";
- Ouellette's second string of emails included a statement that "govt. tools prefer to provoke violence by tax payers instead of just doing their jobs. . . . Do not use an email that includes your name. . . . I got your name. I can look you up on the net";
- Ouellette sent an email to J.S. saying, "most mass shooting by angry people occur at schools and businesses, but I would not push my luck if I were you";
- J.S. believed that Ouellette's statement implied that he would commit a mass shooting at the BCA;
- The investigating BCA agent observed a change in J.S.'s demeanor during her interview when J.S. discussed Ouellette's emails, describing that "her pace slowed, her body posture

became much more submissive,” and at one point, she looked like she was about to cry when talking about being afraid of what might happen;

- J.S. thought Ouellette’s email was “pretty terrifying,” and she was and still is afraid of Ouellette;
- J.S. asked building security to watch her walk to her car or escort her to her car after she received Ouellette’s emails;
- J.S. did not think her life would “ever be the same” and always felt “on guard”;
- J.S.’s fear prevented her from answering a question at trial about her fears because she worried about Ouellette “knowing more ways to get into my head”; and
- Witnesses from DLI, DPS, WIC, and their colleagues were worried that Ouellette would do something violent after receiving similar emails and, as a result, filed police reports and increased security practices in their offices.

Having identified the circumstances proved, we next consider the reasonable inferences that can be drawn from them. Again, we conclude that the only rational hypothesis is guilt. The circumstances proved showed that J.S. was fearful after receiving the email and continued to be fearful of Ouellette at trial. J.S.’s fear was reasonable because—as Ouellette’s email informed J.S.—“most mass shooting by angry people occur at schools and businesses,” and it is reasonable for a service provider receiving that email to believe that an angry customer who sends a threatening email warning that poor customer service could cause a dissatisfied customer to commit a mass shooting may act on that threat. In fact, the circumstances proved show that, like J.S., three recipients of Ouellette’s similar emails in similar contexts all feared that Ouellette would come to their offices and be violent, causing them to fear for their safety and increase security for

themselves or their building. “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 (quotations omitted). Here, the only rational hypothesis is guilt.

Because the circumstances proved are consistent with the jury’s verdict and the reasonable inferences drawn from those circumstances are inconsistent with any rational hypothesis other than guilt, Ouellette’s statement created a reasonable apprehension in J.S. that Ouellette would act on his threat. Thus, the state provided sufficient evidence to support the jury’s finding that Ouellette was guilty of threats of violence.

III. The district court did not abuse its discretion when it admitted the *Spreigl* evidence and when it did not read the modified jury instruction.

Ouellette makes three arguments related to the *Spreigl* evidence: first, that the district court abused its discretion by admitting the evidence; second, that the district court abused its discretion by denying his request to modify the jury instruction; and third, that because these errors were not harmless, the remedy is a new trial. Because we determine that the district court did not abuse its discretion in either of its decisions, Ouellette is not entitled to a new trial.

A. The district court did not abuse its discretion by admitting the *Spreigl* evidence.

Ouellette argues that the district court abused its discretion by admitting *Spreigl* evidence from two witnesses, a DLI employee and a DPS employee. He argues that the evidence was not relevant because there was not a significant relationship in time or location and there was no proximity between the *Spreigl* evidence and the statement upon which the charge is based. Ouellette argues that, because there was no significant

relationship between the evidence and the offense charged, it showed only a propensity for the charged conduct, a purpose for which *Spreigl* evidence may not be used. He also argues that, because the evidence showed propensity, it was more prejudicial than probative. The state argues that the district court did not abuse its discretion by admitting the *Spreigl* evidence because it was relevant to provide context and prove intent. The state asserts that the evidence was more probative than prejudicial because the context demonstrated that the statement was not a singular moment and was not vague or hyperbolic.

Appellate courts review a district court's decision to admit *Spreigl* evidence, also known as other-acts evidence under Minn. R. Evid. 404(b), for an abuse of discretion. *Griffin*, 887 N.W.2d at 261. "A district court abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record." *State v. Hallmark*, 927 N.W.2d 281, 291 (Minn. 2019) (quotation omitted). If the *Spreigl* evidence was erroneously admitted, the appellate court must then determine "whether there is a reasonable possibility that the wrongfully admitted evidence significantly affected the verdict." *Griffin*, 887 N.W.2d at 261-62.

Spreigl evidence "may be admitted for the limited purpose of showing motive, intent, absence of mistake or accident, identity, or a common scheme or plan." *State v. Kennedy*, 585 N.W.2d 385, 389 (Minn. 1998); Minn. R. Evid. 404(b)(1) (stating that other-acts evidence is not admissible for proving action in conformity with character, but "[i]t may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident"). It may not be admitted to show that the defendant has a propensity to commit the charged act or

that they should be punished for other past acts. *State v. Fardan*, 773 N.W.2d 303, 315 (Minn. 2009). To admit *Spreigl* evidence, the state must complete five steps:

- (1) the state must give notice of its intent to admit the evidence;
- (2) the state must clearly indicate what the evidence will be offered to prove; (3) there must be clear and convincing evidence that the defendant participated in the prior act; (4) the evidence must be relevant and material to the state's case; and
- (5) the probative value of the evidence must not be outweighed by its potential prejudice to the defendant.

State v. Ness, 707 N.W.2d 676, 686 (Minn. 2006). Ouellette challenges only the district court's findings on steps four and five.

Step Four: Relevance and Materiality

For step four, to determine whether the proposed *Spreigl* evidence is relevant and material, a district court must isolate "the consequential fact for which the evidence is offered, and then determin[e] the relationship of the offered evidence to that fact and the relationship of the consequential fact to the disputed issues in the case." *Id.* Evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Minn. R. Evid. 401.

There is no bright-line rule for how close the relationship between the *Spreigl* evidence and the charged conduct must be, *Kennedy*, 585 N.W.2d at 390, but "the closer the relationship between the other acts and the charged offense, in terms of time, place, or modus operandi, the greater the relevance and probative value of the other-acts evidence and the lesser the likelihood that the evidence will be used for an improper purpose," *Ness*, 707 N.W.2d at 688. The supreme court has upheld the admission of *Spreigl* evidence when

its relevance was otherwise clear, even when the evidence was six months removed from the criminal conduct at issue. *Kennedy*, 585 N.W.2d at 391. *Spreigl* evidence may be relevant to prove knowledge or mental state if it is an element of the charged offense. *State v. Coleman*, 944 N.W.2d 469, 481 (Minn. App. 2020), *aff'd*, 957 N.W.2d 72. The more similar the *Spreigl* incident is to the charged offense, the more likely it is that the defendant has knowledge of the risk involved in the act. *See id.* at 482 (concluding that a previous incident in which an intoxicated driver had injured someone under circumstances similar to the charged intoxicated-driving incident constituted “intimate, firsthand knowledge of the dangers of drinking and driving”).

Considering step four, the district court did not abuse its discretion by determining that the DLI and DPS witnesses’ testimonies and related emails were relevant to the disputed fact of whether Ouellette acted with intent to terrorize or a reckless mental state because they showed motive and absence of mistake.

The *Spreigl* evidence offered is closely related to the statement upon which the threat charge is based; like J.S., both government-employee witnesses from DLI and DPS testified that they had received emails from Ouellette seeking data or services and threatening or wishing violence on them and their staff when he did not like their responses, felt fear because of the emails, and notified either law enforcement or Ouellette of the effect the emails had on them. Ouellette sent several of the emails that were introduced through these witnesses around the same dates he emailed J.S., and all of the emails were sent from his personal email account and computer around the same time of day.

The *Spreigl* evidence is relevant to the disputed issue of whether Ouellette acted with intent to cause terror or recklessly because it showed that Ouellette made the statement to J.S. with the purpose to cause extreme fear or knew that there was a substantial risk that his statement would cause extreme fear. The evidence shows that government employees who had received emailed statements like the statement Ouellette emailed to J.S. testified that they had received emails from Ouellette seeking data or services and threatening or wishing violence on them and their staff when he did not like their responses, which supports a conclusion that Ouellette knew or intended that his statement may cause fear and intimidate J.S. into doing what he wanted.

Because the *Spreigl* evidence is substantially similar to the charged offense and was offered to prove a disputed issue in the case—Ouellette’s mental state—the district court did not abuse its discretion by finding that the evidence was relevant and that the state met step four.

Step Five: Probity and Prejudice

For step five, “when balancing the probative value of *Spreigl* evidence against the potential for unfair prejudice, the [district] court must consider how necessary the *Spreigl* evidence is to the state’s case.” *Kennedy*, 585 N.W.2d at 391 (quotation omitted). Evidence is more probative when it “helps to establish the relationship between the victim and the defendant” or “places the event in context.” *Id.* at 392. Unfair prejudice “does not mean the damage to the opponent’s case that results from the legitimate probative force of the evidence; rather, it refers to the unfair advantage that results from the capacity of the evidence to persuade by illegitimate means.” *State v. Welle*, 870 N.W.2d 360, 366 (Minn.

2015) (quotation omitted). The evidence is less likely to be prejudicial if the district court provides a cautionary instruction to the jury before it receives the *Spreigl* evidence and before it deliberates. *Kennedy*, 585 N.W.2d at 392.

Considering step five, the district court also did not abuse its discretion by determining that the evidence was more probative than prejudicial. Without the testimonies and accompanying evidence of the DLI and DPS witnesses, the district court's evidence was limited to J.S.'s and the investigator's testimonies. Although these are both highly persuasive, intent is often proved through circumstantial evidence. *See Jones*, 4 N.W.3d at 501. Therefore, the additional evidence to support the state's case was fairly necessary. The district court also provided a cautionary instruction to the jury before the jury heard the *Spreigl* evidence and again before it deliberated. Although the *Spreigl* evidence demonstrating that Ouellette threatened the witnesses over email and made the witnesses fearful of him was significant, the necessity of the evidence to support the contested fact of Ouellette's mental state weighs in favor of finding that the evidence was more probative than prejudicial.

We conclude that the *Spreigl* evidence was necessary to show Ouellette's mental state and to provide context, was relevant to a disputed issue, and was more probative than prejudicial. Because the district court's findings on steps four and five were not contrary to the record or the law, the district court did not abuse its discretion by admitting the *Spreigl* evidence.

B. The district court did not abuse its discretion by not providing Ouellette's requested jury instruction on *Spreigl* evidence.

Ouellette next argues that the district abused its discretion by denying his request to modify the jury instruction about the use of the *Spreigl* evidence because modification requests from defendants seeking to limit the use of *Spreigl* evidence to appropriate purposes should be granted and the district court's denial misinterpreted *State v. Ture*, 681 N.W.2d 9 (Minn. 2004). The state argues that the district court's decision not to read Ouellette's proposed jury instruction limiting the use of the *Spreigl* evidence to the purpose of proving intent was consistent with caselaw because caselaw permits instructions limiting the appropriate use of *Spreigl* evidence only if the instructions describe all permissible uses and that, because the *Spreigl* evidence here was used to prove intent, motive, and lack of mistake, it was within the district court's discretion to deny Ouellette's request.

We first note that the record does not include a proposed jury instruction on *Spreigl* evidence from Ouellette. The transcript shows that, when reviewing the jury instructions before trial, the district court asked whether Ouellette objected to the proposed instruction on *Spreigl* evidence and Ouellette objected. Ouellette then verbally requested that the instruction be modified to say that the evidence may be used to determine only whether he had intent. The state objected to this request, and the district court denied Ouellette's request in light of *Ture*. Prior to the jury's deliberation, the district court read a jury instruction on *Spreigl* evidence that was consistent with the model jury instruction.

Appellate courts interpret caselaw de novo, *State v. Oberton*, 10 N.W.3d 64, 72 (Minn. 2024), and review a district court's jury instructions for an abuse of discretion, *State*

v. Stay, 935 N.W.2d 428, 430 (Minn. 2019). Instructions are reviewed “in their entirety to determine whether they fairly and adequately explained the law of the case.” *State v. Kuhnau*, 622 N.W.2d 552, 555-56 (Minn. 2001).

We determine that the district court’s interpretation of *Ture* was correct and that it controls. In *Ture*, the defendant requested that the district court use the Eighth Circuit’s jury instruction for *Spreigl* evidence because, the defendant argued, the evidence was limited to proving identity and the jury should be instructed not to use the evidence to prove any other element of the state’s case; the district court denied the request. *Ture*, 681 N.W.2d at 17-18. On review, the supreme court observed that, as a general rule, “instructions on particular kinds of evidence should be avoided as much as possible because they tend to inject argument into the judge’s charge.” *Id.* at 18 (quotations omitted). It then explained that *Spreigl* evidence does not always fit within a specific category or purpose and often may be used for more than one purpose, which is why the model jury instruction does not expressly limit the use of *Spreigl* evidence. *Id.* The supreme court concluded that, if the *Spreigl* evidence is admitted for more than one purpose, then it is not an error for the district court to deny a defendant’s request to narrow the model instruction to exclude the permissible purposes for which it is admitted. *Id.*

The application of *Ture* to this case is straightforward. Ouellette requested that the instruction be narrowed to direct the jury that it should consider the *Spreigl* evidence only when determining whether the state proved Ouellette’s mental state and for no other purpose. The district court denied the request because the state offered the evidence to prove motive and absence of mistake in addition to mental state. As discussed above, the

evidence supported each of those components of the state's case, and therefore, the district court's decision not to narrow the jury instruction as Ouellette requested was not an abuse of discretion under *Ture*.

Because we conclude that the district court did not abuse its discretion by admitting the *Spreigl* evidence and denying Ouellette's requested jury instruction, we do not consider Ouellette's argument that these alleged errors were not harmless.

In sum, we conclude that Ouellette's statement was a true threat and not protected by the First Amendment and that, therefore, the application of the threats-of-violence statute to his making of the statement did not infringe his constitutional rights. Furthermore, the state provided sufficient evidence to prove that Ouellette acted with reckless disregard of the risk of causing terror and caused reasonable apprehension in J.S. The *Spreigl* evidence requested by the state was properly admitted to prove these elements because it showed mental state, motive, and absence of mistake. And the district court did not abuse its discretion when it denied Ouellette's request for a jury instruction that did limited use of the *Spreigl* evidence beyond its permissible uses.

Affirmed.