THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2009-0101, State of New Hampshire v. Jonathan M. Hutchins, the court on March 30, 2010, issued the following order:

The defendant, Jonathan M. Hutchins, appeals his conviction for criminal threatening. He argues that the trial court erred when it found that he threatened to commit a crime against the victim. We affirm.

To prevail in his challenge to the sufficiency of the evidence, the defendant must prove that no rational trier of fact, viewing all of the evidence and all reasonable inferences from it in the light most favorable to the State, could have found guilt beyond a reasonable doubt. State v. Ericson, 159 N.H. 379, 385 (2009).

The complaint charged that "the defendant did purposely threaten to commit any crime against the person of another with a purpose to terrorize any person, in that Defendant did threaten [the victim] while waving a knife and yelling at him 'I know you are talking about me' and said Defendant with the purpose to so terrorize [the victim] after throwing the knife down and saying 'Oh It Not You HUH' and said defendant placing his hand under his shirt and pants in a way that [the victim] believed the defendant was going to pull out a gun."

The defendant argues that, under the variant charged in the complaint, see RSA 631:4, I(d), the State was required to prove that he actually uttered a specific threat to commit a crime. In support of this argument, the defendant observes that RSA 631:4, I(a) provides that a person is guilty of criminal threatening when "by physical conduct, the person purposely places or attempts to place another in fear of imminent bodily injury or physical contact." Thus, he argues, because RSA 631:4, I(a) specifically addresses physical conduct, a conviction under RSA 631:4, I(d) based upon physical conduct without a threat to commit a crime would eviscerate the distinction between RSA 631:4, I(a) and RSA 631:4, I(d). We disagree.

As we have previously noted, a single act may constitute more than one variant of a criminal offense. See State v. Daoud, 158 N.H. 334, 338 (2009). In this case, the victim testified that: (1) he heard the defendant yelling; (2) when he came down off a ladder and around the side of his garage, he encountered the defendant who was holding a large, steak carving knife; (3) the defendant was waving it in the direction of the victim and saying, "I know you've been talking about me"; (4) when the victim attempted to get away from the defendant, the

defendant looked at him and said "Where do you think you are going?"; and (5) the defendant then threw the knife to the ground and proceeded to reach under his baggy sweatshirt and into his jeans, which caused the victim to fear that the defendant was about to pull out a gun.

While it is true, as the defendant concedes, that his conduct might have supported a conviction under RSA 631:4, I(a), it was also sufficient to support a conviction under RSA 631:4, I(d) where the defendant addressed his angry remarks to the victim while continuing to advance upon him while brandishing a large steak knife. See State v. Johnson, 130 N.H. 578, 581 (1988) (threat can be verbal or nonverbal).

Affirmed.

DALIANIS, DUGGAN and HICKS, JJ., concurred.

Eileen Fox,
Clerk