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STATE OF MINNESOTA
IN COURT OF APPEALS
A06-1589

State of Minnesota,
Respondent,

vs.

Lisa M. Hawthorne,
Appellant.

Filed February 19, 2008
Affirmed
Hudson, Judge

Hennepin County District Court
File No. 05058673

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, Minnesota 55101; and

Steven M. Tallen, City of Maple Grove Attorney, 4560 IDS Center, 80 South Eighth Street, Minneapolis, Minnesota 55402 (for respondent)

John M. Stuart, State Public Defender, Jessica Godes, Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, Minnesota 55104 (for appellant)

Considered and decided by Kalitowski, Presiding Judge; Randall, Judge; and Hudson, Judge.

U N P U B L I S H E D   O P I N I O N

HUDSON, Judge

Appellant challenges her convictions of harassment, criminal damage to property, disorderly conduct, and reckless driving, arguing that (1) the photo "lineup" was

unnecessarily suggestive because it consisted only of two photographs of appellant and, under the totality of the circumstances, the identification was not reliable; (2) the district court erred by denying defense counsel's mid-trial request for a mental competency examination of appellant; (3) the prosecutor committed prejudicial misconduct that constituted plain error by misstating the burden of proof and injecting personal opinion about the veracity of witnesses; and (4) the evidence was insufficient to support her conviction of harassment. We affirm.

FACTS

At approximately 10:00 p.m. on May 21, 2005, a vehicle drove onto the lawn of the residence of appellant Lisa Hawthorne's ex-husband in Maple Grove, Minnesota. The vehicle drove around the house twice and left tracks and deep ruts in the lawn. The next day, a Maple Grove police officer visited the scene and interviewed a woman who witnessed the incident (eyewitness) and described the driver as "a white female, approximately 40 to 50 years old, with possibly brown hair." Nearly three months later, in August 2005, another Maple Grove police officer showed the eyewitness two photographs of appellant, whom the eyewitness then positively identified as the driver of the vehicle.

On September 21, 2005, Hennepin County filed a complaint in district court charging appellant with (1) harassment in violation of Minn. Stat. § 609.749, subd. 2(1) (2004); (2) fourth-degree criminal damage to property in violation of Minn. Stat. § 609.595, subd. 3 (2004); (3) disorderly conduct in violation of Minn. Stat. § 609.72,

subd. 1(3) (2004); and (4) careless driving in violation of Minn. Stat. § 169.13, subd. 2 (2004). Appellant pleaded not guilty.

At a January 10, 2006, Rasmussen hearing, appellant argued that the eyewitness identification was tainted and should be suppressed. At the hearing, the eyewitness testified that the vehicle was a blue Jeep Cherokee. The eyewitness also testified that at the time of the incident, she recognized the driver as appellant. At the time of the incident, the eyewitness was the girlfriend of appellant's ex-husband's fiancée's son.

The Maple Grove police officer who interviewed the eyewitness and conducted the photographic identification lineup also testified at the Rasmussen hearing. He admitted that the procedure he used—showing the eyewitness only two photographs, both of which were of appellant—was not the procedure he would usually use when conducting a photographic identification. He testified that normally, he would "get a booking photo of an individual and get five other similar photos and put them together in the six picture lineup." He testified that he did not do that in this case because the only available photos of appellant were her driver's license photos, which do not resemble booking photos. On cross-examination, the officer admitted that although the eyewitness had identified appellant prior to the lineup, this fact was not in his report.

At the conclusion of the hearing, the district court ruled that it would allow both the in-court and out-of-court identifications of appellant to be heard by the jury. The district court agreed that the photographic identification was impermissibly suggestive, stating that "[a] one-person photo-lineup is . . . by its nature, suggestive." But it went on

to conclude that, under the totality of the circumstances, the identifications were reliable, and therefore, admissible. The district court stated:

> I note the very consistent testimony between [the] two witnesses. That [the eyewitness] had never met [appellant], but knew who she was. That's what the Detective said. He was told by [the eyewitness], and that's what [the eyewitness] said here today. The identification of somebody that you know is not affected by a two month delay. So, under the totality of the circumstances, there is adequate independent origin . . . to allow the evidence to be admissible. Of course there are things that go to the weight of it that have been raised by [appellant], but I think that it is sufficiently reliable to allow it to be heard by a jury, who can then weigh the weight of that identification, and whether it was corroborated by any other evidence and that kind of thing.

Appellant also argued that the charge of harassment in violation of Minn. Stat. § 609.749, subd. 2(1), should be dismissed for lack of probable cause because the victim was not home at the time of the incident and there were no allegations that the incident caused him to feel "oppressed or frightened." The district court denied the motion to dismiss.

Appellant's jury trial began on January 11, 2006. The jury heard testimony from appellant's ex-husband's neighbor, the eyewitness, the investigating police officer, appellant's ex-husband, and appellant.

The neighbor testified that she was supervising her son's sixteenth-birthday party when she saw a vehicle drive onto appellant's ex-husband's lawn. She could not identify the driver of the vehicle nor did she know to whom the vehicle belonged.

The eyewitness testified that on May 21, 2005, she saw a blue Jeep drive over the curb and onto appellant's ex-husband's lawn. She stated that she saw the vehicle drive

around the house twice. The eyewitness had stopped her own vehicle to watch the other vehicle and testified that the vehicle "drove past my car and it kind of stopped and hesitated, and then started driving off" and that when the vehicle stopped she recognized the driver as appellant. The eyewitness identified appellant as the driver of the blue Jeep. On cross-examination, she admitted that it was dark when the incident occurred, which may have affected her ability to recognize the exact color of the vehicle. She also admitted that although she recognized appellant as the driver of the vehicle on the night of the incident, she did not know appellant's name until she was shown the pictures by the police officer nearly three months later, in August 2005.

Appellant's ex-husband testified that he had obtained a restraining order against appellant in 2004 because he was "receiving constant phone calls, harassing phone calls, phone calls at my work, phone calls on my cell phone, phone calls [at] my house." He stated that appellant was "[c]ontinually harassing me, harassing my fiancée at the time, threatening my fiancée, coming over to our house unwanted." The restraining order directed appellant to "cease or avoid the harassment of [her ex-husband.]" A copy of the restraining order was admitted into evidence. The jury also heard a recording of a message appellant left on her ex-husband's home answering machine in November 2004, telling his then-fiancée to "stay out of [her] business" and stating that she would "come bomb your house or, you know, knock holes through your walls, or do whatever the hell I feel like if I get mad enough."

Appellant's ex-husband also testified that when he found out that the eyewitness had seen appellant driving the vehicle, he "was very disappointed. I was very

embarrassed because this is not only my house, but it's my [fiancee's] house as well, who is now being involved in all of this harassment. It's affecting our relationship tremendously. It's affecting my stepkids' relationship. And I'm tired of it." When asked whether he felt the incident "was more harassment," appellant's ex-husband responded, "[y]eah. I can't get away from it. Neither can my family. They don't deserve it."

On the second day of trial, appellant's trial counsel moved for a rule 20.01 evaluation of appellant's competency:

> In speaking with my client, it's become clear that [appellant] has become tremendously stressed out by this trial and the process. And I can see the fact that it's taken us longer than a day or two has impacted her ability to deal with the stress of the trial. She does not respond in a meaningful way to my questions and she appears to be focusing on many other issues when I attempt to discuss specific issues. In addition, there[] [are] certain conversations or discussions that appear to have not occurred at a later date when we try and – when I try and reference or go back and discuss those topics.

After brief arguments by the parties, the district court denied the motion and stated:

> In evaluating this issue, I am taking into account [appellant's] behavior in court and the fact that I observed her conferring with counsel during jury selection and participating in that. I'm also taking into account the fact that there are indications in this case of mental health concerns, based upon the alleged behavior and past convictions, together with the fact that there are allegations that [appellant] has contacted the complaining witness in this case during the course of trial in an inappropriate way.
>
> However, I don't at this point have any indication beyond [appellant's attorney's] clear argument that communications are difficult and that [appellant] does not always respond to advice or questioning.
>
> My decision at this point, having [e]mpaneled a jury, begun the trial, heard most of the evidence, is that we will

> proceed to the end of the trial. It was my intention if there was a conviction to order a psychological [evaluation] to assist in disposition, in any case, due to the behavior alleged in these incidents.
>
> I could request as part of that a 20.01 evaluation and vacate – I will vacate a conviction if competency appears to be an issue. Otherwise, if there's an acquittal, that will be that, and we won't have to go through the 20.01 evaluation.
>
> So while I understand that there are very – the benefit of the doubt goes to the defense in this situation and the rule generally indicates that a Rule 20.01 should be conducted even mid trial, as I say, while I see mental health concerns here, I have observed no indication of a breakdown in communications. Not that I doubt [appellant's attorney], but I have no independent observation of that and I think that any prejudice to [appellant] could be cured by vacating the conviction if at the close of trial it appears upon evaluation that she is not competent to proceed.

After the close of the state's case, the district court permitted the state to amend the careless-driving charge to one of reckless driving.

Appellant waived her right to remain silent and testified that, in the past, her ex-husband had been very hostile to her and had threatened her physically. Appellant denied driving the vehicle on his lawn but on cross examination, admitted that she drove a medium-blue Jeep Cherokee.

The jury found appellant guilty of all four charges. After the jury returned its verdict, the district court ordered a rule 20.01 psychological and competency evaluation. In February 2006, Carole Mannheim, Ph.D., LP, reported her conclusions that appellant was competent and not mentally ill.

The district court sentenced appellant to 365 days in the workhouse and a fine of $50, stayed all but three days of appellant's sentence for a period of two years, and referred appellant to the mental-health court. This appeal follows.

D E C I S I O N

I

Appellant argues that the district court erred by not suppressing the eyewitness's in-court and out-of-court identifications of appellant because they resulted from an unnecessarily suggestive photo lineup procedure and were not reliable under the totality of the circumstances. We disagree.

Generally, "[e]videntiary rulings rest within the sound discretion of the [district] court and will not be reversed absent a clear abuse of discretion." *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003). However, because the "[a]dmission of identification evidence derived from suggestive identification procedures violates due process," *State v. Roan,* 532 N.W.2d 563, 572 (Minn. 1995), identification evidence must be excluded if the procedure used to obtain the identification was "so impermissibly suggestive as to give rise to a very substantial likelihood of irreparable misidentification." *Simmons v. United States*, 390 U.S. 377, 384, 88 S. Ct. 967, 971 (1968).

To determine whether the identification evidence should have been suppressed, this court must first consider whether the procedure used to obtain the identification was unnecessarily suggestive. *State v. Ostrem,* 535 N.W.2d 916, 921 (Minn. 1995). "Whether a pretrial identification procedure is unnecessarily suggestive turns on whether the defendant was unfairly singled out for identification." *Id*. "Single photo line-up

identification procedures have been widely condemned as unnecessarily suggestive." *Id*. We agree with the district court and both parties that the photo lineup used here was unnecessarily suggestive.

But under the second prong of the test, "the identification evidence, even if suggestive, may be admissible if the totality of the circumstances establishes that the evidence was reliable." *Id*. This court considers five factors when determining whether an identification was reliable under the totality of the circumstances: (1) the opportunity of the witness to view the defendant at the time of the crime; (2) the degree of attention the witness paid to the defendant; (3) the accuracy of the witness's prior description of the defendant; (4) the degree of certainty demonstrated by the witness in identifying the photograph at the photo lineup; and (5) the time between the crime and the photo lineup. *Id*.

Here, the record supports the district court's conclusion that the totality of the circumstances favored the admission of the identifications. First, the eyewitness saw the entire event uninterrupted and provided a description of both the driver and the vehicle. Second, although the eyewitness's description of the driver as a 40- or 50-year-old woman with possibly brown hair driving a blue Jeep Cherokee was vague, it accurately described both appellant and her vehicle. Third, although the "lineup" took place almost three months after the incident, this court has previously accepted an identification based on a photographic lineup that took place five months after the crime. *State v. Fox,* 396 N.W.2d 862, 864–65 (Minn. App. 1986), *review denied* (Minn. Jan. 16, 1987). We conclude that the district court did not abuse its discretion in concluding that the out-of-

court identification was reliable and denying appellant's motion to suppress the eyewitness's out-of-court and subsequent in-court identifications. *See State v. Kelly*, 668 N.W.2d 39, 44 (Minn. App. 2003) (concluding that the identification procedure was not unnecessarily suggestive and, therefore, the out-of-court and in-court identifications were properly admitted).

II

Appellant argues that, because defense counsel expressed concerns about appellant's competency, the district court erred by denying her mid-trial motion for a rule 20.01 competency evaluation. We disagree.

Under the Due Process clauses of the Fifth and Fourteenth Amendments, a criminal defendant may not be tried and convicted unless he or she is legally competent. *State v. Camacho*, 561 N.W.2d 160, 171 (Minn. 1997). "A defendant shall not be permitted to enter a plea or be tried or sentenced for any offense" if he or she "(1) lacks sufficient ability to consult with a reasonable degree of rational understanding with defense counsel; or (2) is mentally ill or mentally deficient so as to be incapable of understanding the proceedings or participating in the defense." Minn. R. Crim. P. 20.01, subd. 1. The construction and application of the rules of criminal procedure is a question of law, which this court reviews de novo. *State v. Hugger*, 640 N.W.2d 619, 621 (Minn. 2002).

If the prosecuting attorney, the defense attorney, or the district court itself "has reason to doubt the competency of the defendant, then the prosecuting attorney or defense counsel by motion or the court on its initiative shall raise that issue." Minn. R. Crim. P.

20.01, subd. 2. Upon such motion, "[i]f the court in which a criminal case is pending determines . . . that there is reason to doubt the defendant's competency as defined by this rule, the court shall suspend the criminal proceedings," proceed in accordance with the rule, and order a medical examination and written report of that examination. Minn. R. Crim. P. 20.01, subd. 2(1)–(4); *State v. McLaughlin*, 725 N.W.2d 703, 710 n.7 (Minn. 2007) (stating that "[i]f a court determines that there is reason to doubt a defendant's competency to stand trial, it must order an examination under Minn. R. Crim. P. 20.01, subd. 2(3)"). Factors relevant to determining whether the defendant is competent to stand trial include "[e]vidence of the defendant's irrational behavior, demeanor at trial, and any prior medical opinion on competence to stand trial." *Camacho*, 561 N.W.2d at 172. "Even when a defendant is competent at the commencement of his trial, a trial court must always be alert to circumstances suggesting a change that would render the accused unable to meet the standards of competence to stand trial." *Drope v. Missouri*, 420 U.S. 162, 181, 95 S. Ct. 896, 908 (1975).

The plain language of rule 20.01, subdivision 2, of the Minnesota Rules of Criminal Procedure requires the district court to suspend proceedings and order a competency evaluation only *if* the district court determines that there is "reason to doubt" that the defendant is able to effectively consult with his or her attorney or the defendant is incapable of understanding or participating in the proceedings. Here, the district court made no such determination. The district court observed and evaluated appellant's behavior both before and during the trial, acknowledged appellant's mental-health concerns, but concluded that appellant did not display behavior that would suggest that

she was incompetent to proceed. To require a district court to order a rule 20.01 competency evaluation every time defense counsel voiced concerns regarding a defendant's competency would effectively negate the district court's evaluative function under the rule.

We conclude that the district court did not err by denying appellant's motion for a rule 20.01 hearing. *See Camacho*, 561 N.W.2d at 172 (concluding that the district court did not err when it concluded that the defendant was competent to waive counsel and did not order a competency hearing when it "reviewed the relevant evidence and observed nothing whatsoever to question [the defendant's] competency" (quotation omitted)).

III

Appellant argues that the prosecutor's unobjected-to closing argument constituted prosecutorial misconduct that amounted to plain error. We disagree.

The Minnesota Supreme Court has held that "appellate courts should use the plain error doctrine when examining unobjected-to prosecutorial misconduct." *State v. Ramey*, 721 N.W.2d 294, 299 (Minn. 2006). Plain error exists if there is an error that is plain and that affects the defendant's substantial rights. *State v. Washington*, 725 N.W.2d 125, 133 (Minn. App. 2006), *review denied* (Minn. Mar. 20, 2007). If misconduct is found, the defendant's conviction will be reversed only if the misconduct impaired the defendant's right to a fair trial. *State v. Powers*, 654 N.W.2d 667, 678 (Minn. 2003). The defendant bears the initial burden of demonstrating plain error, but upon satisfying this obligation, the burden shifts to the state to show that the error did not affect the defendant's substantial rights. *Ramey*, 721 N.W.2d at 302. "If the defendant establishes that the

prosecutor's actions constitute plain error, and the state is unable to meet the burden of showing that there is no reasonable likelihood of a significant effect, the appellate courts then assess whether the error should be addressed to ensure fairness and the integrity of the judicial proceedings." *Washington*, 725 N.W.2d at 133–34 (quotation omitted).

Appellant first argues that the prosecutor "distorted the burden of proof" during his closing argument when he stated:

> [I]f you think [the eyewitness is] somehow mistaken, that it just happened that some random person who happened to match the general physical description of [appellant] decided for no apparent reason that anyone could come up with to drive twice around this townhome complex, did it, well, then, you are going to find [appellant] not guilty. There's no question about that.

"Misstatements of the burden of proof . . . constitute prosecutorial misconduct." *State v. Fields*, 730 N.W.2d 777, 786 (Minn. 2007). But absent objection, such statements do not require reversal unless they rise to the level of plain error. *State v. Hunt*, 615 N.W.2d 294, 302 (Minn. 2000). When determining whether prosecutorial misconduct occurred during closing argument, this court examines "the closing argument as a whole, rather than just selective phrases or remarks that may be taken out of context or given undue prominence." *State v. Walsh*, 495 N.W.2d 602, 607 (Minn. 1993).

Here, when considered in isolation, the prosecutor's statement suggests that the jury needed to look for evidence, presumably from appellant, that someone else committed the offense. But that excerpt represents only a small part of the prosecutor's closing argument, and when the closing argument is viewed in its entirety, it is clear that the prosecutor's statement did not deprive appellant of her right to a fair trial. The

prosecutor also stated that the state had the burden of proving "each and every element of these offenses" and mentioned again later in closing argument that the jury must decide whether "the state prove[d] the elements." Additionally, the defense attorney mentioned the state's burden of proof no fewer than four times during closing argument. And the district court mentioned the state's burden of proof four times in conjunction with its instructions on the law for each of the four charges. The district court also stated that the jury must disregard any of the attorneys' statements that "contain[] any statement of the law that differs from the law I give you." On review, this court assumes that the jury followed the district court's instructions. *State v. Pippitt,* 645 N.W.2d 87, 94 (Minn. 2002).

We conclude that the prosecutor's statement did not constitute misconduct, and even if it did, it did not rise to the level of plain error. *See, e.g., State v. Tate*, 682 N.W.2d 169, 178–79 (Minn. App. 2004) (concluding that prosecutor's statement that defendant had to "explain away" the state's evidence did not constitute prosecutorial misconduct when the prosecutor also stated the correct burden of proof and the district court instructed the jury on the proper burden of proof), *review denied* (Minn. Sept. 29, 2004); *Hunt*, 615 N.W.2d at 302 (concluding that prosecutor's use of a misleading analogy to demonstrate the burden of proof did not deprive defendant of his right to a fair trial where the prosecutor also stated the correct burden of proof and the district court properly instructed the jury on the correct burden of proof and instructed it to disregard any statements by the attorneys to the contrary).

Appellant also argues that, in his closing argument, the prosecutor improperly interjected his personal opinions regarding the credibility of the eyewitness.

During closing argument, a prosecutor has the "right to present to the jury all legitimate arguments on the evidence, to analyze and explain the evidence, and to present all proper inferences to be drawn therefrom." *State v. Wahlberg*, 296 N.W.2d 408, 419 (Minn. 1980). "An advocate may indeed point to circumstances which cast doubt on a witness' veracity or which corroborates his or her testimony, but he may not throw onto the scales of credibility the weight of his own personal opinion." *State v. Ture*, 353 N.W.2d 502, 516 (Minn. 1984).

But in order to "prevent exploitation of the influence of the prosecutor's office," a prosecutor may not interject his or her personal opinions and should not use phrases such as "I suggest to you" or "I think" during closing argument. *State v. Blanche*, 696 N.W.2d 351, 375 (Minn. 2005) (quotation omitted). And it is improper for a prosecutor to "personally endorse the credibility of witnesses" during closing argument. *State v. Porter*, 526 N.W.2d 359, 364 (Minn. 1995).

Here, during his closing argument, the prosecutor stated:

> But I submit that [the eyewitness] was a credible witness; a bright, young woman . . . [who] seemed to know what she knew and didn't seem to . . . have any hesitancy in telling you what she saw.

Later, the prosecutor continued:

> You are down to [the eyewitness], I think. And I'll just submit that [the eyewitness] came here, she told you her story, she didn't make it any more certain than it was. She said the first time she couldn't see who it was. The second

> time she saw it in the headlights, as [appellant] drove away. I submit there is simply no reason to believe that she made this up for one reason or another.

A review of the record shows that the prosecutor used phrases such as "I submit," "I think," or "I believe" more than ten times during his closing argument. But the use of such phrases does not always constitute prosecutorial misconduct. *See Blanche*, 696 N.W.2d at 375 (concluding that 18 statements by the prosecutor such as "I suggest to you," "I ask you," and "I submit to you," were "poorly chosen," but did not constitute plain error); *State v. Hobbs*, 713 N.W.2d 884, 888 (Minn. App. 2006) (concluding that prosecutor's use of the phrase "I submit" while also acknowledging the jury's role as fact-finder did not constitute prosecutorial misconduct or result in undue prejudice), *vacated in part on other grounds* (Minn. Dec. 12, 2006); *State v. Bradford*, 618 N.W.2d 782, 799 (Minn. 2000) (prosecutor's use of the phrase "I submit" was not prosecutorial misconduct when prosecutor was "offering an interpretation of the evidence rather than a personal opinion as to guilt"). Here, the prosecutor also told the jury that "[y]ou'll have to decide if you believe [the eyewitness]," and that the credibility of the eyewitness "[is] your decision and it's probably the most important decision that you are going to have to make in this case."

Echoing the Minnesota Supreme Court's decision in *Blanche*, we caution prosecutors against using any language that interjects the prosecutor's personal opinion during closing arguments. But based on our thorough review of the record, we conclude that, in this case, the prosecutor's statements were poorly-worded attempts to analyze and

explain the evidence to the jury and did not constitute prosecutorial misconduct or result in prejudice to appellant.

IV

Finally, appellant argues that the evidence used to support her conviction of harassment in violation of Minn. Stat. § 609.749, subd. 2(1) (2004), was insufficient because it did not show that her ex-husband felt "frightened, threatened, oppressed, persecuted, or intimidated" by appellant's alleged conduct and therefore did not meet the definition of harassment under Minn. Stat. § 609.749, subd. 1(1)–(2) (2004).

When considering a claim of insufficient evidence, our review "is limited to a painstaking analysis of the record to determine whether the evidence, when viewed in a light most favorable to the conviction," was sufficient to allow the jurors to reach a guilty verdict. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). In doing so, we assume that the jury believed the evidence supporting the state's theory of the case and disbelieved any evidence to the contrary. *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989). We will not disturb the verdict if the jury, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude that the defendant was guilty of the charged offense. *Bernhardt v. State*, 684 N.W.2d 465, 476–77 (Minn. 2004).

Under Minn. Stat. § 609.749, subd. 1(1)–(2), a person harasses another when she engages in intentional conduct that she "knows or has reason to know would cause the victim under the circumstances to feel frightened, threatened, oppressed, persecuted, or intimidated," and her behavior "causes this reaction on the part of the victim."

Here, the jury heard evidence detailing the history between appellant and her ex-husband, including evidence of repeated unwanted phone calls and the fact that appellant's ex-husband felt the need to obtain a restraining order against appellant. His testimony, combined with the evidence the jury heard regarding appellant's past behavior, supports an inference that appellant's ex-husband felt "harassed" within the statutory meaning of the word. Therefore, we conclude the evidence was sufficient to support appellant's conviction.

In addition, appellant argues that the jury was confused about the legal meaning of "harassment" because the restraining order admitted into evidence contained a definition that was different from the statute and jury instructions. But this argument is unconvincing. First, the restraining order did not provide a legal definition of the word "harassment." Second, the district court specifically instructed the jury on the definition they were to use in deciding the case, and that instruction used the same language of the statute to define "harassment." This court assumes that the jury followed the district court's instruction. *Pippitt,* 645 N.W.2d at 94.

Affirmed.