

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1145**

State of Minnesota,
Respondent,

vs.

John Louis Corrigan,
Appellant.

**Filed July 2, 2018
Affirmed
Ross, Judge**

Scott County District Court
File No. 70-CR-16-14594

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Ronald Hocesvar, Scott County Attorney, Todd P. Zettler, Nelson L. Rhodus, Assistant
County Attorneys, Shakopee, Minnesota (for respondent)

Eric J. Nelson, Halberg Criminal Defense, Bloomington, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Rodenberg, Judge; and Hooten,
Judge.

UNPUBLISHED OPINION

ROSS, Judge

This is a case of apparent road rage turned into stalking. John Corrigan shot an
irritated glance at another driver on Highway 169 and then got behind and closely followed
her off the highway through her failed attempts to evade him using multiple turns, lane

changes, and a warning that she was going to call the police. A jury convicted Corrigan of stalking, and Corrigan appeals. He argues that the district court erred by failing to include his requested jury instructions, failing to recuse, and failing to reject the stalking charge for lack of probable cause. He also maintains that the evidence is insufficient to convict him. None of his arguments prevails, and we affirm.

FACTS

Amber Bernier was homebound from work on an evening in August 2016 and heading eastward on Highway 169 north when she encountered John Corrigan in Shakopee. Soon the three-lane roadway would split in two, with cars in the left lane bending north (on Highway 169), cars in the right lane continuing straight (on Highway 13), and cars in the middle lane having the option to choose either route. Corrigan's car was in the far left lane, and Bernier's was immediately behind it. Bernier moved to the center lane, intending to continue straight and avoid the northward bend. Corrigan also changed lanes in front of her. Bernier then pulled into the far right lane and passed Corrigan to her left. Neither liked the other's driving. As Bernier passed, each driver shot angry glances at the other.

Bernier continued in her lane toward the right as the highway divided. And at first Corrigan followed the middle lane toward the left, traveling on Highway 169 north after the point where the middle lane widened and then split in two. But then Bernier saw in her rearview mirror that Corrigan abruptly changed course and crossed the double white lines to continue in Bernier's direction. And he next moved into the right lane directly behind her onto Highway 13. He followed so closely that there was no room for any other car to fit between them.

Highway 13 also soon divided; drivers can continue straight, heading east, or they can bear right, heading south. Bernier moved into the right-hand lane heading south, and Corrigan followed closely behind her. After Bernier began south, she moved two lanes to her left, into the left-turn lane of the first intersection. She saw in her mirror that Corrigan, too, crossed over two lanes and entered the turn lane, cutting in front of another car to position himself behind Bernier. By this point, Bernier was frightened.

Rather than turn left, Bernier attempted to evade Corrigan by pulling out of the turn lane and back into southbound traffic, moving straight through the intersection. She saw in her mirror that Corrigan likewise changed course, following right behind her. Bernier continued through other intersections until she came to McColl Drive, where she moved into the left-turn lane and turned east. She saw in her mirror that, again, Corrigan did the same, following her.

As Bernier traveled east on McColl, she received a call from her husband. Bernier told him that she was being followed, and her husband advised her to call the police. She pulled into the driveway of the Savage fire department and stopped. Corrigan pulled beside her and stopped. Bernier lowered her window and told Corrigan to stop following her. Corrigan stared at her but said nothing. Then Bernier yelled, "Stop following me or I'm going to call the police!" Corrigan responded, "I figured you already would have."

Bernier dialed 9-1-1 and spoke with a dispatcher, who stayed on the line and directed her to the nearby Savage police station. Bernier parked outside the front doors of the station, and Corrigan followed her and parked across the street. Police arrived.

The state charged Corrigan with stalking, and a jury found him guilty. The district court sentenced him to 120 days in jail. Corrigan appeals.

DECISION

Corrigan raises four issues on appeal. He argues that the district court errantly refused to instruct the jury as he had proposed, that the judge improperly failed to recuse himself, that the district court should have rejected the stalking charge for lack of probable cause, and that the evidence was insufficient to convict him. The arguments fail.

We will not fault the district court's decision to deny a requested jury instruction unless the denial reflects an abuse of the district court's discretion. *State v. Schoenrock*, 899 N.W.2d 462, 466 (Minn. 2017). We see no abuse of the district court's discretion in its denial of Corrigan's request to instruct the jury that merely following someone is not a crime. A district court need not give a party's proposed instruction when its substance is already included in another instruction. *Id.* The district court instructed the jury on the specific elements of stalking. The elements do not suggest that following by itself constitutes stalking, and their exclusive nature necessarily implied that following by itself is not stalking. See Minn. Stat. § 609.749, subds. 1, 2(2) (2016). When the district court instructs the jury of the exclusive elements of a crime, it need not also list the conduct that does *not* make up the crime.

And we find no fault in the district court's using the term "victim" in its instructions. "The district court has considerable latitude in selecting language for jury instructions." *State v. Moore*, 699 N.W.2d 733, 736 (Minn. 2005). There may be situations where the reference to a "victim" is "so overused that it results in unfair prejudice to a defendant and

therefore constitutes an abuse of the broad discretion vested in the district court.” *State v. Hall*, 764 N.W.2d 837, 845 (Minn. 2009). This is not such a situation; the district court used the term “victim” only once.

Nor did the district court abuse its discretion by refusing Corrigan’s request to have the jury instructed about a citizen’s arrest. A defendant is entitled to an instruction about his theory of the case when the evidence supports the theory. *State v. Kuhnau*, 622 N.W.2d 552, 557 (Minn. 2001). Corrigan introduced no evidence to support the notion that he was attempting a citizen’s arrest. He was not entitled to the instruction.

Corrigan next argues that the district court judge should have recused himself. A judge may not preside at a trial if the Code of Judicial Conduct disqualifies him. Minn. R. Crim. P. 26.03, subd. 14(3) (2017). Under the code, a judge should disqualify himself in any proceeding in which his impartiality might reasonably be questioned. Minn. Code of Jud. Conduct, Rule 2.11(A) (2016). Corrigan never requested that the judge disqualify himself, so we review his claim only for plain error. *State v. Schlien*, 774 N.W.2d 361, 365 (Minn. 2009). We see nothing in the record that suggests the judge’s impartiality might reasonably be questioned.

Corrigan argues that the judge’s impartiality could reasonably be questioned because he improperly interjected himself into the proceedings by declaring Corrigan’s questions irrelevant and needlessly commenting on Corrigan’s performance. But Corrigan, who represented himself at trial, overlooks the district court’s duty to maintain control of the presentation of evidence and avoid needless consumption of time. *See* Minn. R. Evid. 611(a) (2017). Only relevant evidence is admissible at trial, Minn. R. Evid. 402 (2017),

and a party's failure to object to inadmissible evidence does not require the district court to admit it. With these precepts in mind, we consider whether the judge's impartiality could reasonably be questioned.

Corrigan cites three instances where the district court explained to him that his questions were irrelevant. First, Corrigan asked Bernier if she typically allows her car's gas tank to dwindle to a quarter tank on her drive home. The district court correctly found this question irrelevant to any trial issue. Second, Corrigan asked whether the responding officer thought Corrigan was guilty, and the district court correctly sustained the prosecutor's relevancy objection. Third, after a police officer confirmed a statement that Bernier had made, Corrigan asked the officer, "So this would be before the jury?" The question does not seek any relevant fact helpful to the jury, and the district court interjected to explain that the statement was already before the jury. None of the circumstances call into reasonable question the trial judge's impartiality.

Nor does the district court's alleged interruption of Corrigan's cross-examination of Bernier. Before the supposed interruption, Corrigan had broken off his own questioning to ask for a copy of Bernier's statement. The district court explained that it would not permit Corrigan to interrupt the trial to obtain a copy of Bernier's statement. The district court did not interrupt Corrigan. We reject Corrigan's recusal argument.

Corrigan argues that the district court erred by finding probable cause to support the state's charge of stalking. We need not discuss the argument in light of the conviction and the following discussion addressing whether the state met its burden of proof. If the evidence supports a conviction based on proof beyond a reasonable doubt (and it does), it

necessarily also meets the much lower, probable-cause standard. *State v. Holmberg*, 527 N.W.2d 100, 103 (Minn. App. 1995), *review denied* (March 21, 1995).

Corrigan argues that the evidence is insufficient to support his conviction. We review a challenge to the sufficiency of the evidence by examining the record to see whether a jury could conclude that the defendant is guilty beyond a reasonable doubt. *State v. Stein*, 776 N.W.2d 709, 714 (Minn. 2010). The conviction can stand only if the evidence can prove that Corrigan followed, monitored, or pursued Bernier, he knew or had reason to know that this conduct would cause Bernier to feel frightened, and Bernier indeed felt frightened. Minn. Stat. § 609.749, subds. 1, 2. Corrigan challenges only one element, arguing that the evidence does not establish that he knew or had reason to know his conduct would cause Bernier to feel frightened.

The circumstances gave Corrigan reason to know his conduct would cause Bernier to feel frightened. Indeed, it would be unreasonable to suppose that she would not be frightened by his conduct. After exchanging angry glances with Bernier on the highway, Corrigan followed her closely over a considerable distance and through her obvious, repeated attempts to evade him. Her attempts to evade gave him reason to know that she felt frightened by his conduct. And when the jury learned that Corrigan stared and told Bernier, “I figured you already would have” called the police, the jury had a more than sufficient ground to infer that Corrigan was aware that his conduct had given Bernier reason to be frightened.

Affirmed.