

STATE OF MINNESOTA

IN SUPREME COURT

A25-0518

Hennepin County
State of Minnesota,

Thissen, J.
Concurring in part, dissenting in part,
Hudson, C.J., McKeig, Moore, III, JJ.

Respondent,

vs.

Filed: September 30, 2026
Office of Appellate Courts

Tremaine Michael Bucholz,

Appellant.

Keith Ellison, Attorney General, Saint Paul, Minnesota; and

Mary F. Moriarty, Hennepin County Attorney, Adam E. Petras, Senior Assistant County Attorney, Minneapolis, Minnesota, for respondent.

Cathryn Middlebrook, Chief Appellate Public Defender, Steven P. Russett, Assistant State Public Defender, Saint Paul, Minnesota, for appellant.

S Y L L A B U S

1. District courts should no longer apply the threshold-foundation first step for alternative-perpetrator evidence adopted in our decision in *State v. Hawkins*, 260 N.W.2d 150 (Minn. 1977), which required a defendant to provide evidence having an inherent tendency to connect an alleged alternative perpetrator with the commission of the crime before admitting evidence that a person other than the defendant committed the charged

crime. Instead, district courts should apply the Minnesota Rules of Evidence in determining whether to admit alternative-perpetrator evidence.

2. The defendant is not entitled to a new trial where, despite the district court’s ruling excluding alternative-perpetrator evidence, the jury heard significant evidence of an alleged alternative perpetrator, had an opportunity to consider that party’s connection to the offenses charged, and there was strong evidence of the defendant’s guilt, thus rendering the district court’s ruling to exclude the evidence harmless beyond a reasonable doubt.

3. The entry of a conviction for second-degree murder in the sentencing order was clerical error and must be corrected.

Affirmed in part, reversed in part, and remanded to the district court.

O P I N I O N

THISSEN, Justice.

A jury found appellant Tremaine Michael Bucholz guilty—and the district court convicted him—of first-degree murder during a drive-by shooting and second-degree intentional murder for the shooting death of Stevi Rae Palacio. Bucholz seeks reversal of his convictions on the ground that the district court erred in denying his pretrial motion to identify another individual, D.J., as an alternative perpetrator. He also requests that, if we do not reverse his convictions, we remand to the district court to correct the sentencing order to remove the entry of conviction on the second-degree murder charge.

Minnesota courts apply “a two-step process to determine whether to admit alternative-perpetrator evidence.” *State v. Rooney*, 23 N.W.3d 75, 82 (Minn. 2025). This

is the so-called *Hawkins* test, named for our decision in *State v. Hawkins*, 260 N.W.2d 150, 159 (Minn. 1977):

First, a defendant must make a foundational proffer of ‘evidence having an inherent tendency to connect [the third person] with the actual commission of the crime.’ ... Second, only if the district court determines this threshold requirement has been met may the defendant introduce ‘evidence of a motive of the third person to commit the crime, threats by the third person, or other miscellaneous facts which would tend to prove the third person committed the act’ if the ordinary rules of evidence are satisfied.

Rooney, 23 N.W.3d at 82 (quoting *Hawkins*, 260 N.W.2d at 159). Bucholz argues that we should abandon the threshold-foundation first step of our test for determining whether alternative-perpetrator evidence is admissible.

We accept Bucholz’s invitation. District courts, going forward, should not apply a threshold-foundation inquiry that requires a defendant seeking to introduce any evidence suggesting another person may have committed an offense to first prove an “inherent tendency to connect such other person with the actual commission of the crime.”

Hawkins, 260 N.W.2d at 159 (citation omitted) (internal quotation marks omitted).

Instead, for cases tried on or after the date this opinion issues, district courts should simply apply the Minnesota Rules of Evidence to determine whether to admit alternative-perpetrator evidence. District courts should admit evidence that is relevant—“having 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—to show another person may have committed an offense unless the prejudicial impact of the evidence substantially outweighs its probative value, Minn. R. Evid. 403, or because the evidence is otherwise inadmissible under the Rules of

Evidence. In making this decision, we acknowledge that we are overruling our precedent on the admissibility of alternative-perpetrator evidence. We also recognize the principle of stare decisis that “require[s] a compelling reason” to overturn our past cases in the interest of maintaining “stability in the law.” *Cargill, Inc. v. Ace Am. Ins.*, 784 N.W.2d 341, 352 (Minn. 2010). We conclude, however, that judicial experience with the rule and the practical value of a simpler rule justify the change.

We also conclude that the district court’s ruling that Bucholz did not satisfy the *Hawkins* threshold-foundation step was harmless beyond a reasonable doubt in this case. Accordingly, we affirm Bucholz’s conviction.

Finally, Bucholz separately argues that the district court erred in issuing a sentencing order that entered convictions for both first- and second-degree murder. At Bucholz’s sentencing hearing, the district court orally entered a conviction on only the first-degree murder charge, but the written sentencing order mistakenly reflected that the court had entered convictions on both counts. We agree that the conviction reflected in the written order was a clerical error and remand to the district court to correct the sentencing order and remove the judgment of conviction for second-degree murder.

FACTS

Derrick Lamon Johnson is a drug dealer who has sold cocaine and fentanyl. Bucholz both consumed drugs from Johnson and helped Johnson sell drugs. Bucholz’s mother (Mother) and sister (Sister) also bought drugs from Johnson and spent time with Johnson in Johnson’s apartment.

In the summer of 2023, Sister took a video of Johnson getting “super high out of his mind” when she and three others were at his apartment. Sister testified that she believed Johnson had overdosed because he was unresponsive. The next day, Johnson told Sister and others that he discovered some of his drugs and money were missing. Johnson suspected that Stevi Rae Palacio was among those responsible for the theft and Johnson threatened to kill Palacio.

On August 8, 2023, several people were in Johnson’s apartment, including Johnson, Bucholz, Sister, Mother, and Johnson’s son, D.J. D.J. is a known drug dealer who participated in Johnson’s drug sales, and D.J. knew that Johnson believed Palacio had stolen from him. Shortly before midnight, Johnson, D.J., and Bucholz left the apartment together.

Starting about 11:53 p.m., multiple video cameras recorded a Chevy conversion van circling the block near the intersection of North Thomas Avenue and Oak Park Avenue in Minneapolis. Using license-plate-reader technology, officers later determined that the van belonged to Johnson. At 11:54 p.m., video cameras captured the van as it pulled into an alley that runs parallel to North Thomas Avenue. Video footage shows that Bucholz exited the front passenger door and walked to the driver’s side of the van; the driver exited at the same time, and both Bucholz and the driver walked toward the van’s rear. A second video shows that the driver and passenger doors then opened and shut again before the van continued down the alley toward North Thomas Avenue. The van in the videos had distinct markings and damage.

A doorbell camera subsequently captured video footage of the shooting itself. In that video, Palacio walked alone along North Thomas Avenue about 20 seconds before midnight. Johnson's van turned onto North Thomas Avenue, driving toward Palacio. The video shows that the van slowed and pulled parallel to Palacio, then a gunshot was fired from the van's front passenger window at almost exactly 12:00 a.m. Palacio ran. The van moved in the opposite direction as someone inside continued to shoot at Palacio. The van left the block a few seconds after midnight.

A neighbor called 911 after hearing the gunshots. Police responded and found Palacio face down on the sidewalk without a pulse. Palacio was taken to the hospital by ambulance and pronounced dead. An autopsy determined Palacio died from a gunshot wound to her back.

Investigators later found Johnson's van parked in the underground garage at his apartment complex. Surveillance video from the garage elevator lobby showed that Johnson and Bucholz entered the vestibule 5 minutes and 54 seconds after midnight the night of the shooting.

Forensic testing identified Bucholz's fingerprints on the van's exterior passenger door handle and the exterior and interior of the driver's door. Johnson's prints were on the exterior driver's door and the middle of the van's three exterior windows on the driver's side. The van also displayed prints from two other individuals. DNA testing determined Bucholz and Johnson were possible contributors to a mixture of DNA collected from the van's exterior front passenger door handle, gear shift, and steering wheel, and that

Bucholz was a possible contributor to a DNA mixture collected from the interior front passenger door handle.

At the scene where Palacio was shot, officers found one discharged 10-mm cartridge casing. When processing Johnson's van, officers observed a bullet hole in the front passenger window. Officers also collected a discharged 10-mm cartridge casing from the van's undercarriage. A forensic examiner concluded that the casing in the van was fired from the same gun as the casing from the scene. The police did not recover a weapon.

Officers searched Bucholz's cell phone and found a deleted video of Bucholz holding a gun, as well as text messages sent before the murder that included a picture of Bucholz holding a "Glock 20 Gen 4," a gun that fires 10-mm bullets. The phone's internet history showed that, beginning at 8:15 the morning after the shooting, someone used the phone to search for information about Palacio's murder.

On September 5, 2023, officers arrested and interviewed Bucholz, who acknowledged he was in the van with Johnson the night of the shooting but denied involvement in the murder. Bucholz claimed he had been smoking with a friend at the intersection of 15th and Girard at midnight before getting picked up and returning with Johnson to Johnson's apartment. Bucholz repeatedly asked if the officers had talked to Johnson yet and suggested that there must be another person involved.

On September 8, 2023, the State charged Bucholz with two counts of second-degree murder and one count of ineligible possession of a firearm. A month later, a grand jury indicted Bucholz for first-degree premeditated murder, Minn. Stat. § 609.185(a)(1),

and first-degree intentional murder during a drive-by shooting, Minn. Stat. § 609.185(a)(3), as well as one count of ineligible possession of a firearm, Minn. Stat. § 624.713, subd. 1(2).

On September 15, 2023, officers spoke with D.C., then an inmate at the Anoka County jail, who had contacted them. D.C. had previously sold fentanyl with Johnson and Bucholz and shared that one time when he, Johnson, and Bucholz were together, Johnson offered D.C. \$10,000 to kill Palacio and another person he suspected of stealing from him. After D.C. responded, “it’d have to be a hundred,” Bucholz instead offered, “I’ll do it for free.”¹ D.C. also told officers that he ran into Bucholz the day after the shooting and Bucholz told him, “That bitch had to go,” and referenced “clapping her,” slang for shooting. At trial, D.C. testified that Bucholz told him that he and Johnson “got her” and that Bucholz missed, but Johnson grabbed the gun and was the one to shoot Palacio.

While in jail, Bucholz made statements on recorded phone calls, including, “I can’t believe they got me when they got me. I thought they was gonna get my ass when I came to fucking court,” and “[t]hey know they got [Johnson] but they’re trying to get me too.” He also told his family that he planned to blame D.J. for Palacio’s murder.

Before trial, Bucholz filed notice of his intent to present an alternative-perpetrator defense, naming D.J. as the alternative perpetrator. Bucholz submitted an offer of proof with the following evidence: D.J. was not in custody when Palacio was killed, D.J. was

¹ At trial, D.C. first testified that Bucholz was not present when Johnson offered to pay D.C. to kill Palacio, but after reviewing his grand jury testimony, D.C. corrected himself and said that Bucholz had been there and offered to kill Palacio for free.

present at Johnson's apartment the night of the shooting and left the apartment with Johnson and Bucholz, phone records place D.J. near Johnson's apartment the hour before the shooting, D.J. was a known drug dealer who participated in Johnson's drug sales, D.J. knew that Johnson believed Palacio had stolen from him, and at the time of the offer of proof D.J. was in federal custody for a charge involving a firearm.

The State opposed admitting evidence suggesting that D.J. shot Palacio. The State informed the district court that it had conducted an investigation after receiving Bucholz's notice and asserted that it had found "no evidence of any connection" between D.J. and either Palacio or the crime scene. The State highlighted that cell phone records show D.J.'s phone was on a continuous 15-minute phone call beginning at 11:55 p.m.—when the van was circling the block and someone inside shot Palacio—and at that time D.J.'s phone was north of the area of the shooting. The State further noted that D.J.'s cell phone continued to move north after the shooting.

The district court determined that Bucholz had not established an adequate foundation to admit alternative-perpetrator evidence under the *Hawkins* test's threshold-foundation step and ordered that Bucholz could not introduce evidence connecting D.J. to the shooting.

The State then asked that the district court preclude Bucholz "from testifying about or offering evidence regarding any alleged alternative perpetrator(s)" The district court deferred ruling until Bucholz decided whether to testify.

At trial, despite the district court order, both the State and Bucholz presented testimony and evidence about D.J. and his connection, or lack thereof, to the shooting.

During the State's case, Mother, and Sister both testified that Johnson, D.J., and Bucholz were in Johnson's apartment the night of the shooting, and that all three left the apartment shortly before midnight. Mother and Sister also testified that Johnson and Bucholz returned to the apartment less than 10 minutes later, while D.J. returned after an hour or two. The State introduced D.J.'s cell phone records which showed his phone was on a call and north of the area of the crime at the time of the shooting.

After the State rested, Bucholz decided to testify. The district court reminded counsel of its ruling excluding alternative-perpetrator evidence and noted its expectation that "no alternative perpetrator evidence will be introduced during the presentation of the defense's case but also during Mr. Bucholz's testimony." The district court nonetheless overruled objections from the State and permitted Bucholz to recount his version of events, including testimony that placed D.J. at the scene.

Bucholz testified that he was in the van when Johnson saw Palacio walking down North Thomas Avenue. Bucholz stated that he tried to dissuade Johnson from killing her. He then testified that Johnson drove into the alley parallel to North Thomas Avenue and told Bucholz, "Get the fuck out then, pussy." Bucholz said both men exited the van—Bucholz to leave the area, and Johnson to make sure Bucholz left. Bucholz stated that after he exited he saw the van continue down the alley and he heard gunshots. Bucholz testified that the van then pulled back up, with D.J. driving and Johnson in the passenger seat, and stopped behind him. Bucholz said that when they arrived at Johnson's apartment, D.J. left in his truck while Bucholz and Johnson went back upstairs.

In his testimony, Bucholz denied offering to kill Palacio and said he was not truthful with police because Johnson had threatened to kill him and his family and because the police did not yet have Johnson in custody. During cross-examination, Bucholz acknowledged that in jail phone calls he told his family that he planned to blame D.J. He said that in those calls he “kind of just threw [D.J.] at [the prosecutors] to see how hard [the prosecutors are] going to work.”

In its closing argument, the State told the jury it should not consider D.J. a potential perpetrator of Palacio’s murder. The prosecutor asserted that the surveillance videos, forensic analysis, and evidence from the car showed that Johnson and Bucholz were the only two involved in the murder. The prosecution also argued that while D.J. may have left Johnson’s apartment with Bucholz and Johnson, a lack of forensic evidence linking D.J. to the van or gun, along with D.J.’s phone activity and location, meant that it was “impossible” for D.J. “to have been in that vehicle or to have participated in this crime.” Finally, the prosecutor urged the jury to assess Bucholz’s credibility given his statements from jail that he would blame D.J. as a tactic.

The defense raised D.J.’s potential connection to the murder in its closing argument. Counsel argued that the State failed to investigate whether D.J. was also in the van and failed to demonstrate that D.J. was the one using his phone during the shooting, thereby leaving open the possibility that D.J., and not Bucholz, had participated in the murder.

The jury found Bucholz not guilty of first-degree premeditated murder (count one) and ineligible possession of a firearm (count three), but guilty of first-degree murder

during a drive-by shooting (count two) and second-degree intentional murder (count four). At sentencing, the State requested that the district court “recognize the guilty verdict on the murder in the second degree – intentional – but not issue a conviction on that count.” At the sentencing hearing, the district court, accepted the jury’s verdict on first-degree intentional murder during a drive-by shooting and “recognize[d] that the jury found Mr. Bucholz guilty of murder in the second degree” but only imposed a sentence on first-degree intentional murder during a drive-by shooting. The written sentencing order filed that same day, however, stated that Bucholz was convicted of both first-degree intentional murder during a drive-by shooting and second-degree intentional murder.

Bucholz appealed directly to this court. Minn. Stat. § 632.14. He urges us to reverse his convictions because the district court improperly excluded evidence that D.J. killed Palacio. He also asks us to vacate his sentence for second-degree murder.

ANALYSIS

Bucholz urges us to reverse his convictions because the district court improperly excluded evidence, and prevented argument, that another person—D.J.—killed Palacio. In deciding to exclude Bucholz’s alternative-perpetrator evidence, the district court applied the threshold-foundation first step of our two-step approach to determine whether such evidence is admissible. Under the threshold-foundation step, a defendant cannot present evidence that another person committed a charged offense unless “proper foundation [is] laid for the admission of such evidence.” *Hawkins*, 260 N.W.2d at 159. To establish such foundation, the defendant must offer evidence “having an inherent

tendency to connect such other person with the actual commission of the crime.” *Id.* (citation omitted) (internal quotation marks omitted).

Bucholz argues that we should abandon the threshold-foundation first step. Preliminarily, we conclude that we may consider Bucholz’s argument even though he failed to raise it in district court. Next, we consider whether we should continue to retain the threshold-foundation step—including whether the reasons for abandoning a long-standing evidentiary standard are sufficient to overcome the important principle of stare decisis—and conclude that we should abandon it. Instead, district courts should apply the familiar admissibility framework set forth in the Rules of Evidence.

Nonetheless, we explain that, to the extent the district court erred in applying the threshold-foundation first step of the *Hawkins* test in Bucholz’s case, such error was harmless beyond a reasonable doubt.

Lastly, we assess whether the district court erred in issuing a sentencing order that entered convictions for both first- and second-degree murder. We conclude the sentencing order is erroneous and remand to the district court to vacate the second-degree murder conviction.

I.

A.

We begin by assessing whether Bucholz forfeited his argument that we should abandon the threshold-foundation step in our alternative-perpetrator analysis. The State argues that Bucholz forfeited the argument by failing to raise it in the district court and highlights that we often do not consider arguments advanced for the first time on appeal.

See State v. Davis, 735 N.W.2d 674, 681 (Minn. 2007) (declining to consider whether to alter our approach to admitting evidence—specifically, impeachment by prior criminal convictions under Minnesota Rule of Evidence 609—because the defendant did not make the argument in district court).

We conclude that in this case it is appropriate to consider Bucholz’s argument that we should eliminate the threshold-foundation step in our alternative-perpetrator analysis. Most importantly, we perceive no unfairness to the State if we consider the issue. Bucholz presents us with a purely legal issue that both parties have fully and effectively briefed. *See State v. Thompson*, 937 N.W.2d 418, 421 n.2 (Minn. 2020). Further, based on our precedent, the district court had no power to grant Bucholz the relief he seeks, meaning Bucholz’s failure to raise the issue before the district court does not implicate the concern that we have deprived that court of the opportunity to avoid error had the issue been raised before it. *See Pulczynski v. State*, 972 N.W.2d 347, 358 (Minn. 2022) (citing *Weaver v. Massachusetts*, 582 U.S. 286, 302 (2017) (stating that a purpose of our forfeiture jurisprudence is to encourage parties “to raise errors before the district court when the district court can cure any potential error and avoid any resulting harm”)). Finally, whether to change our evidentiary rules on admitting alternative-perpetrator evidence is a question of statewide importance and is likely to recur. *See Rooney*, 23 N.W.3d at 85 (Thissen, J., concurring) (suggesting that we revisit our approach to admitting alternative-perpetrator evidence in an appropriate case); *State v. Woodard*, 942 N.W.2d 137, 145–48 (Minn. 2020) (Thissen, J., concurring) (same); *cf. Snell v. Walz*, 6 N.W.3d 458, 467 n.8 (Minn. 2024) (agreeing that appellant “forfeited his ‘antecedent

evidentiary showing’ argument by raising it for the first time on appeal,” but concluding that “we consider the argument nevertheless in the interest of justice, given our stated imperative to decide this issue now”). And as we discuss next, this question falls within our inherent “authority to regulate and supervise the rules that govern the admission of evidence in the lower courts.” *See State v. Hill*, 871 N.W.2d 900, 905 n.4, 909 (Minn. 2015) (citations omitted) (internal quotation marks omitted) (deciding issue implicating this inherent authority even though the appellant “did not raise this argument in the district court”).

B.

We turn to whether we should abandon the threshold-foundation step in our alternative-perpetrator analysis.

1.

We begin with the observation that the first step of our two-step approach to admitting alternative-perpetrator evidence—the threshold-foundation inquiry—is an evidentiary rule. We have inherent authority to determine the rules governing what evidence is admissible in Minnesota state courts. *State v. McNeilly*, 6 N.W.3d 161, 193–97 (Minn. 2024) (stating that we have the “authority to regulate and supervise the rules that govern the admission of evidence in the lower courts”); *State v. Gianakos*, 644 N.W.2d 409, 415 (Minn. 2002) (exercising authority over evidentiary rules to adopt a new rule in a court decision); *State v. Willis*, 332 N.W.2d 180, 184 (Minn. 1983) (explaining that we have authority over the rules governing evidence admission). We adopted the threshold-foundation inquiry in our decision in *Hawkins*. 260 N.W.2d at 159.

We similarly have supervisory authority to change that rule here. *See McNeilly*, 6 N.W.3d at 193–97 (exercising our authority to regulate and supervise the rules that govern admitting evidence in the lower courts to establish prospective rules for admitting evidence obtained during searches of attorney offices); *State v. Zinski*, 927 N.W.2d 272, 278 (Minn. 2019) (exercising our supervisory powers over admitting evidence to establish a prospective rule for admitting relationship evidence under Minnesota Statutes section 634.20); *State v. Scales*, 518 N.W.2d 587, 592–93 (Minn. 1994) (exercising our supervisory power to establish prospective parameters for admitting evidence obtained in police interrogations).

For the detailed reasons we outline below, and in accordance with our authority to regulate and supervise the rules that govern admitting evidence in Minnesota district courts, we conclude that district courts should no longer apply the threshold-foundation first step for alternative-perpetrator evidence adopted in our decision in *Hawkins*. Instead, district courts should assess whether evidence that a person other than the defendant committed a crime is admissible under the Rules of Evidence in the same way as other evidence.

2.

The purpose of alternative-perpetrator evidence—evidence supporting an argument that a person other than the defendant committed a crime—is to defend against criminal charges by creating a reasonable doubt about the defendant’s guilt. *State v. Ferguson*, 804 N.W.2d 586, 591 (Minn. 2011). Evidence and argument that another person committed the crime is not an affirmative defense and is not admitted to establish

the other person’s guilt. *Id.* “The due process clauses of both the Minnesota Constitution and the United States Constitution guarantee a defendant’s right to a fair opportunity to defend against criminal charges.” *Troxel v. State*, 875 N.W.2d 302, 307 (Minn. 2016) (citing, among other sources, U.S. Const. amend. XIV and Minn. Const. art. I, § 6). “A defendant’s constitutional right to a fair opportunity to defend against criminal charges includes the right to present evidence that a third party (an ‘alternative perpetrator’) committed the crime for which the defendant was charged.” *Woodard*, 942 N.W.2d at 141 (citation omitted) (internal quotation marks omitted). This right, however, is not absolute, and district courts may limit the defendant’s evidence through evidentiary rules. *State v. Jenkins*, 782 N.W.2d 211, 224 (Minn. 2010).

Like all other evidence, alternative-perpetrator evidence is not admissible if it does not satisfy “the ordinary rules of evidence.” *Rooney*, 23 N.W.3d at 82; *State v. Heller*, 12 N.W.3d 452, 469 (Minn. 2024) (stating that “alternative-perpetrator evidence must be admissible under the normal rules of evidence before it may be introduced at trial”). Under our decision in *Hawkins*—a case tried four years before the Minnesota Rules of Evidence went into effect on July 1, 1977—the proponent of alternative-perpetrator evidence must also clear an additional hurdle: evidence that another person committed an offense must be excluded before ever considering the other rules of evidence unless “proper foundation [is] laid for the admission of such evidence ... to avoid the consideration of matters collateral to the crime.” 260 N.W.2d at 159–60 (holding that the threshold-foundation step was satisfied because the alleged alternative perpetrator’s trial

testimony connected him to the crime).² Evidence tending to show another person committed a crime is inadmissible “unless coupled with other evidence having an inherent tendency to connect such other person with the actual commission of the crime.” *Id.* at 159 (citation omitted) (internal quotation marks omitted).

We have not precisely identified the contours of the “inherent tendency” foundational principle since we first articulated it. In many ways, it has become an analysis-stopping phrase. We do know that it requires something more than ordinary rules applied to other types of evidence. Rules 401 and 402 generally require proof that a piece of evidence has a tendency to make the existence of a fact that a person other than the

² In *Hawkins*, a murder case, the defendant argued that another person, John Czuchry, who was at the crime scene when the murder occurred and who testified at trial, committed the murder. 260 N.W.2d at 155–56. The defendant sought to introduce evidence that, before the crime, Czuchry and the victim talked about stolen guns one of them possessed and that Czuchry, who was intoxicated on the night of the murder, became physically violent when intoxicated. *Id.* at 158. This evidence of “possible past illegal dealings between Czuchry and the victim,” and “collateral acts of violence by Czuchry,” *id.* at 160, is what we would today refer to as reverse-*Spreigl* evidence. See *State v. Gutierrez*, 667 N.W.2d 426, 436 (Minn. 2003) (defining reverse-*Spreigl* evidence as proof of past crimes or bad acts committed by a third party offered by a criminal defendant to cast doubt on their own guilt by suggesting someone else committed the crime). Under Minnesota Rule of Evidence 404(b), such evidence is not admissible (even if it satisfies the *Hawkins* threshold requirement) “to prove the character of a person in order to show action in conformity therewith [but may] be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.” In addition, such evidence is inadmissible unless the defendant establishes “(1) by clear and convincing evidence that the third party participated in” the prior crime, wrong, or act; “(2) that the reverse-*Spreigl* incident is relevant and material to [the] defendant’s case; and (3) that the probative value of the reverse-*Spreigl* evidence outweighs its potential for unfair prejudice.” *Gutierrez*, 667 N.W.2d at 437 (alteration in original) (citation omitted) (internal quotation marks omitted); see also *Heller*, 12 N.W.3d at 469–70 (applying the Rules of Evidence and reverse-*Spreigl* analysis in an alleged-alternative-perpetrator case).

defendant committed the criminal act more probable or less probable than it would be without the evidence—subject, of course, to limitations on admitting evidence that poses a danger of unfair prejudice, confusing the issues, or misleading the jury, or that may result in undue delay, waste of time, or needless presentation of cumulative evidence, Minn. R. Evid. 403; evidence of other crimes, acts, or wrongs introduced to prove the character of a person in order to show action in conformity therewith, Minn. R. Evid. 404(b); evidence that is inadmissible hearsay, Minn. R. Evid. 802; and other evidentiary rules. The effective result of the *Hawkins* test’s threshold-foundation step for alternative-perpetrator evidence seems to be that a defendant must produce direct evidence connecting the alleged alternative perpetrator to a crime before the defendant is allowed to introduce circumstantial evidence that *also* suggests that the alleged alternative perpetrator may have committed the crime—an additional step not required to introduce other forms of evidence.³ See *infra* at 24–25.

³ Our case law makes clear that “circumstantial evidence is entitled to the same weight as direct evidence,” *Bernhardt v. State*, 684 N.W.2d 465, 477 (Minn. 2004), and district court judges regularly instruct juries that facts “may be proven by either direct or circumstantial evidence, or by both,” and “[t]he law does not prefer one form of evidence over the other.” 10 Minn. Dist. Judges Ass’n, *Minnesota Practice—Jury Instruction Guides, Criminal*, CRIMJIG 3.02 (7th ed. 2025). In requiring a threshold foundation for alternative perpetrator evidence, the *Hawkins* test seems to undervalue alternative-perpetrator circumstantial evidence as compared to other evidence. See Keith A. Findley & Michael S. Scott, *The Multiple Dimensions of Tunnel Vision in Criminal Cases*, 2006 Wis. L. Rev. 291, 361 (2006) (observing that the evidence at issue in the threshold-foundation step is typically circumstantial evidence, “given that direct evidence, by definition, should satisfy the direct connection [requirement to connect an alleged alternative perpetrator to a crime before a defendant may introduce evidence that such person committed the offense,]” even though “circumstantial evidence can support the inferences necessary to establish proof beyond a reasonable doubt”).

It is unclear why alternative-perpetrator evidence should be subject to a threshold-foundation requirement that does not apply to other evidence used for similar purposes. Professor Wigmore raised the same question when criticizing alternative-perpetrator rules like ours:

The question that arises, from the point of view of the rules of evidence, is whether, in evidencing the doing of an act by a third person as a fact of disproof, any unusual requirements should be made concerning the strength of the evidence before it can be admitted. Thus, to prove *A* guilty of murder, evidence of his threats (i.e., a design) to commit it are always admissible; now, if the fact to be proved is that *B* committed the murder (as inconsistent with *A*'s guilt), why should not *B*'s threats be admitted, without further restriction, as *A*'s are? It is true that evidence of *B*'s threats alone would not go far toward proving *B*'s commission; but it is not a question of absolute proof, nor even of strong probability, but only of raising a reasonable doubt about *A*'s commission, and for this purpose the slightest likelihood of *B*'s commission may suffice or at least assist. The evidence of *B*'s threats, to be sure, may, in a given instance, be too slight to be worth considering, but it seems unsound as a general rule to hold that mere threats, or mere evidentiary facts of any one sort, are to be rejected if unaccompanied by additional facts pointing toward *B* as the doer.

1A John Henry Wigmore, *Evidence in Trials at Common Law* § 139, at 1724 (Tillers rev. ed. 1983) (citation omitted). Essentially, unlike the case-by-case approach we typically take to assessing whether a piece of evidence is admissible, the threshold-foundation step in our alternative-perpetrator-evidence analysis imposes a mechanical, general prohibition on a specific type of evidence. See Keith A. Findley & Michael S. Scott, *The Multiple Dimensions of Tunnel Vision in Criminal Cases*, 2006 Wis. L. Rev. 291, 360 (2006) (stating that “[t]he direct connection doctrine reverses the Rule 403 burden and presumption” and that “[t]hird-party perpetrator evidence is, in effect, presumptively

inadmissible unless the defendant can show a direct connection to the charged crime, and that burden, as we have seen, is not insubstantial”).

We have offered a handful of policy reasons for imposing a higher foundational requirement for alternative-perpetrator evidence. First, we justified the threshold-foundation step as necessary to safeguard alleged alternative perpetrators from accusations based on *bare* suspicion and *indiscriminate* use of past differences with the deceased. This is a curious rationale. *See* David S. Schwartz & Chelsey B. Metcalf, *Disfavored Treatment of Third-Party Guilt Evidence*, 2016 Wis. L. Rev. 337, 394 (2016) (observing that “very few courts ever mention the protection of third parties or their reputations as a justification for any of the direct connection [foundational threshold for alternative-perpetrator] doctrines”). The Rules of Evidence exclude allegations based on bare suspicion and indiscriminate use of past differences. Under Rule 403, any circumstantial evidence that is purely speculative—does not rise to more than bare suspicion—is inadmissible. *State v. Henderson*, 620 N.W.2d 688, 699 (Minn. 2001); *see* Findley & Scott, *Multiple Dimensions of Tunnel Vision in Criminal Cases*, 2006 Wis. L. Rev. at 361 (explaining that courts reject evidence in the alternative-perpetrator context as speculative where it is not truly speculative). Rule 403 therefore already prohibits truly speculative evidence and can serve to protect an alleged alternative perpetrator’s reputation from baseless accusation. Further, Rules 403 and 404 provide that a court may exclude evidence used to harass a witness. *State v. Lanz-Terry*, 535 N.W.2d 635, 639 (Minn. 1995). Thus, it is unclear why evidence *otherwise admissible under the Rules of Evidence* should be excluded simply to protect a person from allegations of wrongdoing.

We do not do this for other types of evidence. Moreover, refusing to admit otherwise-relevant evidence due to concerns about its effect on a person’s reputation is particularly problematic when weighing this interest against a defendant’s liberty interests and constitutional right to present a complete defense. Schwartz & Metcalf, *Disfavored Treatment of Third Party Guilt Evidence*, 2016 Wis. L. Rev. at 394–95 (noting that alternative-perpetrator foundation tests have the perverse effect of allowing in evidence that is damaging to an alleged alternative perpetrator’s reputation while excluding less-damaging evidence); *cf. State v. Foster*, 20 N.W.3d 6, 25 (Minn. 2025) (stating that courts may apply the ordinary rules of evidence to exclude alleged alternative perpetrators who plan to invoke their right against self-incrimination from testifying even though excluding the evidence may limit a defendant’s constitutional right to present a complete defense).

Our other stated policy reason for imposing a higher foundational requirement for alternative-perpetrator evidence is to avoid presenting “matters collateral to the crime” to a jury. *Hawkins*, 260 N.W.2d at 159. Embedded in this policy justification is the notion that circumstantial evidence that has a tendency to show another person may have committed a crime is collateral to the crime—even though it *is otherwise admissible*.⁴ We

⁴ Here, it is worth a reminder that *Hawkins* was tried nearly four years before we adopted the Rules of Evidence, thus the *Hawkins* court did not have available—or need to consider—the Rules of Evidence in reaching its decision. Accordingly, the context in which we stated a new rule for alternative-perpetrator evidence is meaningfully different after several decades of cases developing the meaning and application of the Rules of Evidence.

find it hard to conceive how such evidence may be considered “collateral to the crime” in any meaningful sense.

It has become clear over time that the threshold-foundation rule “treats people accused of a crime differently than those attempting to prove the accusation.” *Woodard*, 942 N.W.2d at 145 (Thissen, J., concurring). The State need not meet a threshold-foundation standard separate from the Rules of Evidence to introduce evidence that a *defendant* committed a crime; it may rely completely on circumstantial evidence of motive and opportunity—without introducing *any* direct evidence that the defendant was at a crime scene or connected to the crime. For instance, in *State v. DeRosier*, 695 N.W.2d 97, 108 (Minn. 2005), we affirmed a first-degree murder conviction based on evidence that the defendant had a motive to commit the murder, had access to a murder weapon, and had a key to the victim’s residence, even though no direct evidence connected the defendant to the scene at the time of the murder.

In contrast, in some cases we have held that, absent evidence of a direct connection between another person and the crime, a defendant cannot introduce substantial circumstantial evidence alleging that an alternative perpetrator committed the crime. For instance, in *State v. Flores*, 595 N.W.2d 860, 868–69 (Minn. 1999), we affirmed the district court in excluding evidence that an alleged alternative perpetrator was at the victim’s house shortly after the last time he was seen alive, the alleged alternative perpetrator’s business card was found in a bag of bloody clothes the defendant possessed, the victim owed the alleged alternative perpetrator money for drugs, and the alleged alternative perpetrator had threatened to kill another person who owed him

money for drugs within a month of the victim's death. We held that this was not "sufficient evidence connecting [the alleged alternative perpetrator] to the crime." *Id.* at 869. In *State v. Williams*, 593 N.W.2d 227, 232–34 (Minn. 1999), we affirmed the district court's decision to exclude evidence that the victim's granddaughter had previously received an order for protection against the alleged alternative perpetrator (the granddaughter's former boyfriend) and that the alleged alternative perpetrator had previously harassed the victim, broken into the victim's home, vandalized the victim's property, threatened one of the granddaughter's friends, and made phone calls to the victim's house on the day of the murder. We determined that because the defendant "offered no evidence placing [the alleged alternative perpetrator] at or near [the victim]'s house on the night of the murder," "evidence of the prior incriminating acts alone is not sufficient to establish the required *Hawkins* foundation." *Id.* at 234. In other words, to make its case against a criminal defendant, the State would have been allowed to present the jury with evidence, like that excluded in the alternative perpetrator context in *Flores* and *Williams* and such evidence would have been sufficient to uphold a conviction.⁵

The accused rarely has the resources—let alone resources equivalent to the State's—to adequately investigate the possibility that another person committed the crime with which they are charged. Therefore, it is somewhat unfair, both logically and practically—especially after we have adopted the Rules of Evidence, which include

⁵ The concurrence-dissent asserts that the evidence in *Flores* and *Williams* connecting the alleged alternative perpetrators to the crimes charged was weak. Even if that is true, if the evidence is relevant and otherwise admissible, a fact-finder should be able to consider that evidence in rendering its verdict.

several safeguards against allowing juries to consider matters collateral to the crime—to impose a unique and higher evidentiary burden on a criminal defendant than we impose on similar evidence the State proffers.

The State argues that this asymmetric treatment of the State and defendants is justified because the State has an independent obligation to establish that charges against a defendant are supported by probable cause. The argument compares apples to oranges, misunderstanding the purpose of alternative-perpetrator evidence. The probable-cause question is whether there is a reasonable probability that the State can prove every element of a crime—“facts appearing in the record, including reliable hearsay, [that] would preclude the granting of a motion for a directed verdict of acquittal if proved at trial.” *State v. Lopez*, 778 N.W.2d 700, 703–04 (Minn. 2010) (citation omitted) (internal quotation marks omitted); *State v. Letourneau*, 23 N.W.3d 386, 396 (Minn. 2025).⁶ If such facts do exist, then the State may introduce whatever admissible evidence it chooses to prove its case. Defendants have no such duty to prove *anything*—they may, in fact, offer no defense beyond asserting that the State has not proved its case beyond a reasonable doubt. This lack of fit in the State’s probable-cause argument reflects the larger conceptual problem with our threshold-foundation step: it tends to improperly shift the focus of admissibility—from whether evidence a defendant offers has a tendency to negate the defendant’s guilt to how effectively that evidence establishes an alleged alternative perpetrator’s guilt. Moreover, under the alternative-perpetrator threshold-

⁶ As we discussed in *State v. Florence*, 239 N.W.2d 892, 903–04 (Minn. 1976), the process for making this determination depends on the type of evidence presented.

foundational step, a defendant must provide some direct connection between the alleged alternative perpetrator and the crime before they can introduce any evidence that another person may have committed the crime—something the State need not do to establish *probable cause* or, indeed, to *convict* the defendant.⁷ See *DeRosier*, 695 N.W.2d at 108 (stating that a jury may find a defendant guilty beyond a reasonable doubt based on circumstantial evidence, which means that the State can establish probable cause based on circumstantial evidence alone).

3.

Rather than requiring district courts to undertake the threshold-foundation step in assessing whether alternative-perpetrator evidence is admissible, we conclude that courts should assess evidence that a person other than the defendant committed a crime under the Rules of Evidence. Such evidence is admissible if it is relevant, Minn. R. Evid. 401 and 402, and if the probative value of the evidence is not “substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” Minn. R. Evid. 403. In addition, to the extent such evidence is evidence of another crime, wrong, or act—so-called reverse-*Spreigl* evidence—the defendant must satisfy Rule 404. And, of course, evidence that is inadmissible under other evidentiary

⁷ The concurrence-dissent notes that in *Woodard*, 942 N.W.2d at 144 n.2, we stated that cases may exist in which overwhelming circumstantial evidence of motive, opportunity, and method of murder would satisfy the *Hawkins* test. No such case has emerged in the decades since we first announced the inherent-tendency requirement. That is the critical point.

rules, like the hearsay rules, should be excluded. *See, e.g., Bobo v. State*, 969 N.W.2d 829, 836 n.6 (Minn. 2022) (excluding evidence that another person confessed to a crime as inadmissible hearsay); *see also State v. Young*, ___ N.W.3d ___, Nos. A23-1606, A25-0334, 2026 WL 2855624 (Minn. 2026) (affirming the exclusion of evidence related to an alternative perpetrator under the ordinary Rules of Evidence); *State v. Johnson*, ___ N.W.3d ___, No. A25-0709, 2026 WL 2727733 (Minn. 2026) (same).⁸

In addition, we direct that a defendant must provide written notice to the prosecutor that the defendant intends to introduce evidence at trial suggesting that another person committed the crime and that such notice be provided in the same manner as the defendant would provide notice of the other issues identified in Minnesota Rule of Criminal Procedure 9.02.⁹

⁸ The concurrence-dissent relies in part on *Foster*, 20 N.W.3d 6. In that case, we held that a district court has “discretion to allow the defendant to call the alternative perpetrator as a trial witness, even when it is known that the alternative perpetrator will invoke the right against self-incrimination.” *Id.* at 26. We further stated that “in exercising its discretion, the district court must determine whether the alternative perpetrator’s invocation of the right against self-incrimination comports with the ordinary rules of evidence.” *Id.* In reaching that decision, we observed that the threshold-foundation step provides a guardrail that limits defendants from subpoenaing “any known person of disrepute and forc[ing] him or her to” invoke the right against self-incrimination. *Id.* at 25 (citation omitted) (internal quotation marks omitted). We went on to observe that a district court has the discretion to prevent such a witness from testifying under the ordinary rules of evidence, including weighing probative value against the risk of unfair prejudice to the State. *Id.* Our point in this opinion is that applying the Rules of Evidence as written provides the protection we sought to impose when we announced the threshold-foundational step prior to the rules being adopted.

⁹ Contemporaneous with this decision, we are adopting by separate order amendments to Rule of Criminal Procedure 9.02 clarifying that if a defendant intends to argue at trial that another person committed an offense with which the defendant is charged in order to create reasonable doubt about the defendant’s guilt, the defendant

As we have explained and further address below, we conclude that our decision will improve the fairness of judicial proceedings, *Fagin v. State*, 933 N.W.2d 774, 780 (Minn. 2019), and make judicial proceedings simpler, more efficient, and more understandable for all involved.

C.

We acknowledge that our holding overturns *Hawkins* and its progeny. We are “extremely reluctant to overrule our precedent” and will do so only for “compelling reason[s].” *State v. Martin*, 773 N.W.2d 89, 98 (Minn. 2009) (quoting *State v. Lee*, 706 N.W.2d 491, 494 (Minn. 2005)). At the same time, the Minnesota Supreme Court is not an infallible institution and stare decisis is not an inflexible rule that prevents courts from learning from experience. Stare decisis is legal policy, and respect for precedent does not bind the court to “unsound principles.” *Oanes v. Allstate Ins.*, 617 N.W.2d 401, 406 (Minn. 2000). We have noted that “stare decisis does not apply with the same strictness in some fields of law as in others,” *State ex rel. Foster v. Naftalin*, 74 N.W.2d 249, 267 (Minn. 1956), adhering most strictly when rights may have vested in reliance on court decisions. *Johnson v. Chi., Burlington & Quincy R.R.*, 66 N.W.2d 763, 771 (Minn. 1954). Among other things, we have been willing to reconsider our past decisions when a rule contradicts principles of equity and when a rule originated in a historical context and no longer accomplishes its purported aims. See *Cargill*, 784 N.W.2d at 352. We recognize our authority and responsibility to establish rules governing admissible evidence at trial,

must inform the prosecutor in writing and must identify the evidence they plan to introduce.

Gianakos, 644 N.W.2d at 415; *Willis*, 332 N.W.2d at 184, and we have amended the Rules of Evidence many times.

We conclude there are compelling reasons to eliminate the threshold-foundation step for alternative-perpetrator evidence. As explained above, some of the justifications for the threshold-foundation step no longer withstand scrutiny. *Supra* at Part I.B.2. As critically, we adopted the threshold-foundation step in a different historical context—before implementing the Rules of Evidence. To the extent the policy reasons we offered to justify the threshold-foundation step for alternative-perpetrator evidence were valid at the time, they are no longer necessary. Rules 401, 402, 403, and 404 now address the policy concerns underlying the threshold-foundation step—ensuring that a jury does not hear or consider matters truly collateral to crimes, such as speculative assertions based on “bare suspicion” and indiscriminately raising past differences with victims. *Hawkins*, 260 N.W.2d at 159. For example, matters truly collateral to a crime are not relevant, and therefore are inadmissible under Rule 402. Further, the Rules of Evidence afford district courts discretion to exclude relevant evidence, including speculative evidence that raises only the specter of bare suspicion, where the potential for confusing the issues or misleading the jury substantially outweighs the probative value of the relevant evidence. Minn. R. Evid. 403; *Henderson*, 620 N.W.2d at 699. The Rules of Evidence empower district courts to exclude evidence of other crimes, wrongs, or acts of persons other than defendants offered to show that such a person committed a crime because their character inclined them to do so. Minn. R. Evid. 404(b); *Heller*, 12 N.W.3d at 469–70 (stating that limitations on admitting bad acts evidence applies equally to the State’s attempts to

introduce such evidence about a defendant and a defendant's attempts to introduce such evidence about an alleged alternative perpetrator). In short, the Rules of Evidence now provide sufficient guardrails to prevent admitting "matters collateral to a crime" or evidence based on "bare suspicion" and "indiscriminate use of past differences with the deceased." And the Rules of Evidence apply equitably to similar evidence whether the State or a defendant offers it.

We are also persuaded to move away from the threshold-foundation step for alternative-perpetrator evidence for practical reasons. We conclude that asking judges to apply the familiar Rules of Evidence rather than the threshold-foundation step's unique and somewhat vague "inherent tendency" standard will be easier for courts and litigants alike, reducing confusion and the potential for error.

We further observe that the *Hawkins* test's threshold-foundation step is an evidentiary rule. That fact, of course, does not mean that stare decisis is inapplicable to our precedents establishing evidentiary rules and procedures. *See State v. Harris*, 895 N.W.2d 592, 598 n.3 (Minn. 2017) (quoting *Naftalin*, 74 N.W.2d at 267, for the proposition that stare decisis "is not inapplicable in any field [of law]"). But we have recognized that stare decisis applies more strictly in some fields of law than in others. *Id.* The policy of stare decisis is strongest "in cases involving property and contract rights, where reliance interests are involved ...; the opposite is true in cases ... involving procedural and evidentiary rules." *Payne v. Tennessee*, 501 U.S. 808, 828 (1991); *see Johnson*, 66 N.W.2d at 770 (stating, in a case involving the doctrine of *forum non conveniens*, that "[w]here no rights have vested in reliance upon former decisions, the

rule [of stare decisis] is not so strictly followed”). Rules governing procedures and evidence admission often “do[] not affect the way in which parties order their affairs,” and changing an evidentiary rule does not “upset settled expectations on anyone’s part.” *Pearson v. Callahan*, 555 U.S. 223, 233 (2009).

Further, we have recognized that we have inherent authority to determine the rules governing which evidence is admissible at trial. *Gianakos*, 644 N.W.2d at 415; *Willis*, 332 N.W.2d at 184. Indeed, here we are overturning our own court-made rule governing admitting evidence, established outside of—and prior to—the Rules of Evidence. *See Pearson*, 555 U.S. at 233–34 (noting that stare decisis weighs heavily in the area of statutory construction, but less heavily where a “rule is judge made and implicates an important matter involving internal Judicial Branch operations”).

Finally, acknowledging that decisions from other jurisdictions do not bind us and that jurisdictions handle alternative-perpetrator evidence admissibility in many different ways, we have considered other states’ practices in deciding whether to overrule our precedent. *See Cargill*, 784 N.W.2d at 352–53; *see also Daniel v. City of Minneapolis*, 923 N.W.2d 637, 652 (Minn. 2019) (overruling a precedent in part because the overruled case did not “comport[] with the decisions of many other state supreme courts—*most issued after [the overruled decision]*” (emphasis added)). We find support for our decision to abandon the threshold-foundation step articulated in *Hawkins* in part because the general trend in other jurisdictions that have *directly confronted* the question of whether to adopt a foundational-threshold test instead of straightforward Rules of Evidence application have opted for the latter. *See, e.g., State v. Hernandez*, 989 N.W.2d

525, 533–34 (S.D. 2023); *State v. Kato*, 465 P.3d 925, 940–41 (Haw. 2020); *State v. Meister*, 220 P.3d 1055, 1059–60 (Idaho 2009); *State v. Gibson*, 44 P.3d 1001, 1003–04 (Ariz. 2002); *People v. Primo*, 753 N.E.2d 164, 168 (N.Y. 2001).

Accordingly, for the reasons we have explained, and in accordance with our authority to regulate and supervise the rules that govern admitting evidence in Minnesota district courts, we hold that, for cases tried on or after the date this opinion is released, district courts should no longer apply the threshold-foundation first step for alternative-perpetrator evidence adopted in our decision in *Hawkins*. Instead, district courts should assess whether evidence that a person other than the defendant committed a crime is admissible under the Rules of Evidence in the same way as other evidence.

II.

We now turn our attention to whether to grant Bucholz a new trial based on the district court’s determination, under the first step of the *Hawkins* test, that Bucholz did not lay sufficient foundation to introduce evidence that D.J. killed Palacio. For purposes of this analysis, we will assume without deciding that the exclusion of evidence was error. Even if it was error, we will not grant a new trial if the error was harmless. *Troxel*, 875 N.W.2d at 308. Because erroneously excluding evidence offered by a criminal defendant can deprive the defendant of their constitutional right to present a complete defense, we examine whether any erroneous exclusion of evidence here was harmless beyond a reasonable doubt. *See State v. Westrom*, 6 N.W.3d 145, 155 (Minn. 2024). “[E]xclusion of evidence is harmless beyond a reasonable doubt when, assuming the potential damage of the excluded evidence were fully realized, a reasonable jury would

have reached the same verdict.” *Id.* (citation omitted) (internal quotation marks omitted).

We conclude that Bucholz is not entitled to a new trial because there is no possibility that a reasonable jury’s verdict might have been different had the district court admitted all the evidence—beyond that which the jury did receive—Bucholz sought to offer about D.J.

We have determined that a defendant is not entitled to a new trial based on a district court’s initial exclusion of evidence that another person committed the crime where the court did not fully enforce its decision and, as a result, the jury had an opportunity to consider the third party’s connection to the crime. In *State v. Atkinson*, 774 N.W.2d 584, 592 n.1 (Minn. 2009), the defendant raised the possibility of an alternative perpetrator in cross-examination by casting doubt on the identification of the shooter, and the State, in its closing argument, discussed the possibility that the defendant would argue that another person committed the crime. We concluded that, even though the defense did not make an alternative-perpetrator argument in its closing, the jury had “ample opportunity” to consider whether another person committed the crime. *Id.* Likewise, in *State v. Blom*, 682 N.W.2d 578, 623 (Minn. 2004), we determined that the district court’s exclusion of alternative-perpetrator evidence was harmless because multiple witnesses testified to physical similarities between the alleged alternative perpetrator and the defendant.

So too here. The jury heard much of the evidence about D.J.’s connection to Palacio’s murder despite the district court’s initial order denying Bucholz’s request to introduce evidence D.J. committed the crime. During the State’s case, Mother and Sister both testified that D.J. was in Johnson’s apartment the night of the shooting and that D.J.

left the apartment with Johnson and Bucholz shortly before midnight. Bucholz himself testified that D.J. drove the van during the shooting, sharing directly with the jury his narrative placing D.J. at the crime scene. Further, during closing arguments, both the State and Bucholz urged the jury to evaluate D.J.’s connection to the crime, with Bucholz highlighting that the State failed to properly investigate D.J. as a suspect.

In addition, substantial evidence suggesting that D.J. was not at the scene of the shooting also came out at trial. The State introduced evidence of calls made from D.J.’s phone—the same phone that Bucholz relied on in his offer of proof to show that D.J. was near Johnson’s apartment before the crime—from a different area than the scene of the shooting at the time the shooting took place. Footage from video cameras in the neighborhood and in the parking garage at Johnson’s apartment building does not show that D.J. was present.

The same video footage does show Bucholz. Fingerprint and DNA evidence connect Bucholz to the crime. And the jury was told of several statements Bucholz made implicating himself in the murder. *See State v. Trifiletti*, 6 N.W.3d 79, 95 (Minn. 2024) (stating that we may “consider the strength of evidence of the defendant’s guilt” to reinforce a conclusion that an error was harmless).

We acknowledge that the jury did not hear evidence of D.J.’s involvement with Johnson’s drug dealing or D.J.’s pending firearm offense charge. But Bucholz presented far more alternative-perpetrator evidence to his jury than Atkinson did in his trial, and we nonetheless found the effect of the error in *Atkinson* harmless because the slight suggestion that an alternative perpetrator committed the crime gave the jury ample

opportunity to consider the possibility that someone other than the defendant had done so. *Atkinson*, 774 N.W.2d at 592 n.1; *Blom*, 682 N.W.2d at 623. We conclude that admitting these additional facts would not have changed the jury's verdict.

Bucholz also suggests that the district court's ruling under the threshold-foundation first step precluding him from introducing alternative-perpetrator evidence prevented his lawyer from zealously advocating at critical stages of trial by foreclosing additional cross-examination, barring entry of additional evidence, and restricting counsel's ability to lead Bucholz in direct examination. But Bucholz does not offer specifics about these claims. In light of the considerations above and the allowances for alternative-perpetrator evidence the district court made after its ruling to exclude that evidence, we are not convinced Bucholz's assertions raise a reasonable doubt about whether a reasonable jury would have reached the same verdict had the district court not made its initial ruling.

In short, the record in this case shows beyond a reasonable doubt that there is no possibility that the jury's verdict might have been different had the district court admitted all the evidence that Bucholz sought to offer about the alleged alternative perpetrator. Bucholz is not entitled to a new trial.

III.

Lastly, the jury found Bucholz guilty of both first-degree murder during a drive-by shooting and second-degree murder. A defendant "may be convicted of either the crime charged or an included offense, but not both." Minn. Stat. § 609.04, subd. 1. "In Minnesota, every lesser degree of murder is an included offense." *Westrom*, 6 N.W.3d at

161 (citation omitted) (internal quotation marks omitted). A conviction occurs when a court accepts and records a guilty verdict. *Spann v. State*, 740 N.W.2d 570, 573 (Minn. 2007).

The district court did not impose a conviction on the second-degree murder charge at Bucholz's sentencing hearing. But the written sentencing order lists Bucholz as convicted of the second-degree count as well as the first-degree murder during a drive-by shooting count.¹⁰ Bucholz requests that we remand this case to the district court to correct the clerical error in the sentencing order that erroneously entered judgments of conviction for both first-degree and second-degree murder. *See* Minn. R. Crim. P. 27.03, subd. 10 (providing that a court may correct clerical mistakes in an order at any time). The State agrees that we can and should remand the case to the district court to make the correction.

Accordingly, we remand to the district court and direct it to correct Bucholz's sentencing order by eliminating any reference to entry of a conviction on the second-degree murder charge. The jury verdict finding Bucholz guilty of second-degree intentional murder, however, remains intact. *State v. Hallmark*, 927 N.W.2d 281, 299–300 (Minn. 2019).

¹⁰ The parties disagree about whether a formal conviction was entered on the second-degree murder count. Citing *State v. Staloch*, 643 N.W.2d 329, 331 (Minn. App. 2002), the State asserts that the district court's accurate oral sentence controls over the sentencing order. Because we are remanding to the district court to correct the clerical error in the written sentencing order, we need not and do not address that question.

CONCLUSION

For the foregoing reasons, we affirm in part, reverse in part, and remand to the district court to correct Bucholz's sentencing order by eliminating any entry of a conviction on the second-degree murder charge.

Affirmed in part, reversed in part, and remanded to the district court.

CONCURRENCE & DISSENT

HUDSON, Chief Justice (concurring in part and dissenting in part).

This case asks us to abandon the test that Minnesota courts have used for nearly 50 years to determine the admissibility of alternative-perpetrator evidence, as set forth in *State v. Hawkins*, 260 N.W.2d 150 (Minn. 1977). Today, the court has done so, relying, in part, on the importance of a defendant’s constitutional right to present a complete defense. I, of course, acknowledge that right, but I also note that it is not absolute. And thus, I strike a different balance between a defendant’s right to present a complete defense and the institutional principles represented by stare decisis, especially given the continued existence of the practical and prudential concerns that drove the creation of the alternative-perpetrator test and the test’s continued workability. Because I see no extraordinary need to overrule *Hawkins*, I would retain the alternative-perpetrator test. Accordingly, I respectfully dissent from Parts I.B and I.C of the court’s decision.¹

To justify overruling nearly 50 years of precedent, the court leans heavily on the fact that the alternative-perpetrator test is a judicially-created evidentiary rule and that the court has the inherent authority to determine the rules that govern the admissibility of evidence at trial. *State v. McNeilly*, 6 N.W.3d 161, 193 (Minn. 2024) (“[W]e have the inherent authority to regulate and supervise the rules that govern the admission of evidence in the lower courts.”). All that is true. But just because we can use our inherent

¹ I agree that it is appropriate to consider Bucholz’s argument, that Bucholz is not entitled to a new trial, and that there was a clerical error in the sentencing order. Accordingly, I join the court’s opinion in Parts I.A, II, and III.

authority does not mean that it is prudent to do so. “[W]e have steadfastly held” that the court’s supervisory powers over evidentiary rules are to be “invoked only in exceptional circumstances.” *State v. Hill*, 871 N.W.2d 900, 909 (Minn. 2015) (citation omitted) (internal quotation marks omitted). Before using that power, we have considered whether the change conforms to or protects existing rules, *Dobbins v. State*, 845 N.W.2d 148, 156 (Minn. 2013), and whether a change will “ensure the fairness of judicial proceedings,” *Fagin v. State*, 933 N.W.2d 774, 780 (Minn. 2019). We have declined to invoke our inherent authority to change an evidentiary rule when it would be “simply too great a departure” from longstanding practice. *State v. Gianakos*, 644 N.W.2d 409, 419 (Minn. 2002). For the reasons discussed below, I do not believe there is an existing unfairness in judicial proceedings that needs to be corrected, and I do not see a need to deviate from the test that courts have applied for almost 50 years. Accordingly, I see no exceptional circumstance that justifies the exercise of our inherent authority here.

The institutional principle of stare decisis similarly cautions restraint absent a compelling need for action. “The doctrine of stare decisis ‘directs us to adhere to our former decisions in order to promote the stability of the law and the integrity of the judicial process.’ ” *State v. Lampkin*, 994 N.W.2d 280, 288 (Minn. 2023) (emphasis omitted) (quoting *State v. Willis*, 898 N.W.2d 642, 647 n.7 (Minn. 2017)). While stare decisis “does not apply with the same strictness” in every area of law, there is also a reason that we have noted that stare decisis “is not inapplicable in any field.” *State v. Harris*, 895 N.W.2d 592, 598 n.3 (Minn. 2017) (citation omitted) (internal quotation marks omitted). The decisions of this court shape expectations in the legal community.

Stare decisis counsels us to pause and ensure there is a powerful motivation before upsetting those expectations. Respect for precedent is critical to maintaining predictability in the law, which is why we are “extremely reluctant” to overrule past cases and require “a ‘compelling reason’ ” before we act, no matter the area of law. *State v. Martin*, 773 N.W.2d 89, 98 (Minn. 2009) (quoting *State v. Lee*, 706 N.W.2d 491, 494 (Minn. 2005)). In addition to the above rationales, the court offers four other reasons to justify overruling the *Hawkins* alternative-perpetrator test. None demonstrate a compelling need for this court to act.

A.

First, the court contends that “some of the justifications” for the creation of the *Hawkins* test “no longer withstand scrutiny.” Most notably, the court describes the need to safeguard third parties from baseless accusations as “a curious rationale.” But this justification carries equal, if not greater, force today. The *Hawkins* test prevents the introduction of evidence of third-party guilt unless the defendant first provides evidence that has “an inherent tendency to connect [the third party] with the actual commission of the crime.” *Hawkins*, 260 N.W.2d at 159 (citation omitted) (internal quotation marks omitted). This requirement protects third parties from “the use of bare suspicion and ... indiscriminate use of past differences with the deceased.” *Id.* The court notes that we do not provide additional layers of protection to third parties in other types of evidence. But alternative-perpetrator evidence is unique in that it “inculpates a third party as the perpetrator of the crime charged.” *State v. Curtis*, 905 N.W.2d 609, 616 (Minn. 2018). It is unlike other forms of evidence that a defendant could offer, such as alibi evidence, for

example, and thus keeps the focus on the defendant rather than shifting the focus to another person.

The risks of implicating a third party remain, and may, in fact, be heightened after our recent decision in *State v. Foster*, 20 N.W.3d 6, 26 (Minn. 2025), in which we held that a defendant is able, under certain circumstances, to call an alternative perpetrator as a trial witness even when the defendant knows that the alternative perpetrator will invoke the right against self-incrimination. To support our decision in *Foster*, we noted that the *Hawkins* alternative-perpetrator test provided a critical “guardrail” and acted as an “important principle” to ensure that defendants could not “call[] witnesses with no connection to the case.” *Id.* at 25. Only defendants that already established that a third party had a sufficiently close connection to the crime would be able to call that party to the stand.² *Id.* Thus, the *Hawkins* test ameliorated fears that a defendant would “subpoena any known person of disrepute and force him or her to take the Fifth.” *Id.* (quoting *State v. Heard*, 934 N.W.2d 433, 444 (Iowa 2019)). Removing the *Hawkins* guardrail while still allowing defendants to call third parties as witnesses unnecessarily increases the risk that an innocent person will be called into court, asked incriminating questions, and forced to

² The court summarizes *Foster* as “stating that courts may apply the ordinary rules of evidence to exclude alleged alternative perpetrators who plan to invoke their right against self-incrimination from testifying even though excluding the evidence may limit a defendant’s constitutional right to present a complete defense.” But the court ignores that the *Hawkins* test shaped our reasoning in *Foster*. Our holding in *Foster* added the caveat that only “[w]hen a defendant has satisfied the required test to present an alternative perpetrator defense,” does a district court have “discretion” under “the ordinary rules of evidence” to allow a defendant to call an alternative perpetrator as a witness. 20 N.W.3d at 26 (emphasis added). We remove this safeguard with our decision today and ask the Rules of Evidence to bear even more weight.

invoke the constitutional right against self-incrimination based on “bare suspicion” or “indiscriminate use of past differences.” *Hawkins*, 260 N.W.2d at 159.

B.

Second, I disagree that the *Hawkins* test results in unfair and asymmetrical treatment of evidence offered by defendants as compared to evidence from the State. As the State persuasively argues, by the point of a trial, a judge has already reviewed and concluded that the State has provided facts “showing a reasonable probability that the person committed the crime” to satisfy the probable-cause standard. *State v. Lopez*, 778 N.W.2d 700, 703 (Minn. 2010). Again, reflecting the unique inculcating power of alternative-perpetrator evidence, there is reason to pause before allowing the defendant to shift the jury’s attention to another person and potentially new and different facts after the State has met its probable-cause burden.

The court also suggests that there is an unfair asymmetry in requiring a defendant to provide evidence of a “direct connection” between the alternative perpetrator and the crime when the State does not need to do the same. This misunderstands the *Hawkins* test, which requires only that the evidence have an “inherent tendency” to connect the alternative perpetrator and commission of the crime. *Hawkins*, 260 N.W.2d at 159. This can be established without direct evidence. *See State v. Woodard*, 942 N.W.2d 137, 144 n.2 (Minn. 2020) (explaining direct evidence of an alternative perpetrator’s presence at the crime scene was not required and noting “[t]here may be cases where overwhelming circumstantial evidence of motive, opportunity, and method of murder” satisfies the *Hawkins* test). The comparison of the two standards is not “apples to oranges,” as the

court posits, but rather reflects the varying probative value of evidence at different stages of a criminal investigation and trial and the different policy reasons underlying the creation of two different evidentiary standards.

C.

Third, the court asserts that because *Hawkins* pre-dates the adoption of the Rules of Evidence, it is now an unnecessary and duplicative evidentiary hurdle for defendants to satisfy. But the fact that a particular rule arises from a different historical context, alone, has never been enough to overcome principles of stare decisis. Specifically, we have required a showing that the context had evolved such that the previous rule no longer accomplished its aims and created unfairness for litigants. *See Cargill, Inc. v. Ace Am. Ins.*, 784 N.W.2d 341, 352–53 (Minn. 2010) (overruling after determining a prior rule was “ill-suited for the complexity” of modern litigation and was no longer supported by principles of equity, fairness, or logic).³ Thus, while the Rules of Evidence provide

³ There is also just as much need to protect third parties from unfounded accusations in today’s digital age—when it is easier than ever to access information about others and when false information reaches more people, more quickly than the truth—than in 1977 when the *Hawkins* test was created. *See* Soroush Vosoughi, Deb Roy & Sinan Aral, *The Spread of True and False News Online*, 359 Sci. 1146, 1148–49 (2018) (finding false information spread to more people and more quickly than true information); Brendan Nyhan & Jason Reifler, *When Corrections Fail: The Persistence of Political Misperceptions*, 32 Pol. Behav. 303, 323 (2010) (finding corrections may strengthen misperceptions among some audiences). This need is compounded by the new ability to maliciously create fake videos that target another person, which can impact the target’s reputation, cause trauma, and have legal ramifications. The judiciary has not grappled with how to protect those falsely accused and implicated by these “deepfake” videos. *See, e.g.*, Rebecca A. Delfino, *Deepfakes on Trial: A Call to Expand the Trial Judge’s Gatekeeping Role to Protect Legal Proceedings from Technological Fakery*, 74 Hastings L.J. 293, 293–339 (2023) (explaining the harm deepfakes cause, how deepfakes have

some guardrails against admitting irrelevant and collateral evidence, the *Hawkins* test can still be a useful tool to shape a district court’s evaluation of the probative value of evidence.

For example, the *Hawkins* test may prompt a court to consider whether the proffered evidence supports a third party’s presence at the scene of a crime, motive, identifying evidence, or opportunity to commit the crime—striking a balance between evidence that may be relevant under Minn. R. Evid. 401, but nevertheless insufficient to connect a third party to the actual commission of a crime. Similarly, the *Hawkins* test is a tool that guides an evaluation of whether the proffered evidence of a third party’s guilt has probative value, and whether that value is outweighed by the danger of misleading or confusing the jury on the key issue of whether the current defendant is guilty of the charged crime. Assessing the proffered evidence for whether it shows, for example, that a third party was at the scene and had the motive and opportunity to commit the crime is not specifically required under Minn. R. Evid. 403, which only more holistically considers whether evidence would distract or mislead a jury. I see no reason to abandon a test that aids a reviewing judge in evaluating evidence’s value and connection to the case.⁴

already appeared in legal proceedings, and the inadequacy of the rules of evidence to address the problems posed by deepfake evidence).

⁴ The court also asserts that Minn. R. Evid. 404 will work, in part, to exclude evidence introduced for the purpose of harassment. Yet, as the court also acknowledges, Rule 404 is more related to reverse-*Spriegl* evidence and the consideration of a witness’s prior bad acts, which is not implicated here.

Moreover, we are far from an outlier in our simultaneous use of an alternative-perpetrator test and general rules of evidence. The court claims that the “general trend” is to the contrary, without acknowledging that many other jurisdictions have recognized the value provided by alternative-perpetrator threshold admissibility tests even after the adoption of rules of evidence. *See, e.g., State v. Abbitt*, 891 S.E.2d 249, 258 (N.C. 2023) (noting evidence offered to show a third party’s guilt “must do more than create mere conjecture of another’s guilt in order to be relevant” and explaining how relevance is shown (citation omitted) (internal quotation marks omitted)); *People v. Turner*, 476 P.3d 676, 698–99 (Cal. 2020) (explaining alternative-perpetrator evidence, “[l]ike all other evidence” is subject to the rules of evidence and noting the state’s threshold test guides standards of relevance and admissibility); *State v. R.Y.*, 230 A.3d 292, 303–04 (N.J. 2020) (reaffirming the state’s alternative-perpetrator test as confirming the relevance of evidence before considering admissibility under the state’s rules of evidence); *State v. Wilson*, 864 N.W.2d 52, 63–67, 70 (Wis. 2015) (reaffirming the validity of the state’s alternative-perpetrator test and acknowledging the test helps ensure evidence meets evidentiary criteria for admissibility); *State v. Reese*, 877 A.2d 1090, 1092–93 (Me. 2005) (noting trial courts admit probative evidence, but highlighting that to be probative, defendants must “reasonably establish the connection between the alternative perpetrator and the crime through *admissible evidence*” (citation omitted) (internal quotation marks omitted)). The practices of other states cannot alone be the basis for overruling precedent,

Harris, 895 N.W.2d at 598–99, and other states’ practices provide even scant justification when our state is not an outlier.⁵

D.

Fourth and finally, I do not agree that the “inherent tendency” requirement of the *Hawkins* test has become an “analysis-stopping phrase” that confounds courts. As the State argues, the requirement to show an “inherent tendency” is no more amorphous than other recognized standards like “reasonable articulable suspicion.” Moreover, concerns that a test is hard to apply have been considered insufficiently compelling to overcome stare decisis. *See id.* at 600 (upholding an evidentiary test after disputing that courts had trouble applying the test and noting case law addressed concerns of confusion).

And there is no evidence to support the court’s argument that district courts struggle to apply the *Hawkins* test, or have imposed more burdensome requirements over time.⁶ The court cites *State v. Flores*, 595 N.W.2d 860 (Minn. 1999), and *State v. Williams*, 593 N.W.2d 227 (Minn. 1999), for this proposition, but both are inapposite.

⁵ The court also notes that “[w]e have not precisely identified the contours of the ‘inherent tendency’ foundational principle.” But an appropriate and more measured first response to the court’s concerns is not to abandon the *Hawkins* test, but, as other courts have done, provide additional guidance on how to apply the test and what evidence meets the standard. *See, e.g., Wilson*, 864 N.W.2d at 64–67 (discussing each of the prongs of Wisconsin’s alternative-perpetrator test “to provide additional guidance” after reaffirming the use of the test).

⁶ The idea that courts struggle to apply the test is not borne out in case law. After surveying cases from our court and the court of appeals reviewing a district court’s application of the *Hawkins* test since 1977, I could identify only five cases that reversed the district court’s decision based on a misapplication of the *Hawkins* test. *See State v. Carbo*, 6 N.W.3d 114, 125–26 (Minn. 2024); *State v. Ferguson*, 804 N.W.2d 586, 592–93 (Minn. 2011); *State v. Jones*, 678 N.W.2d 1, 15–21 (Minn. 2004); *State v. Bellaphant*,

In *Flores*, the alternative-perpetrator evidence was not rejected—as the court suggests—because of the third party’s lack of “direct connection” to the crime. Instead, we affirmed the trial court because we agreed that the defendant “failed to offer *sufficient* evidence connecting [the third party] to the crime.” *Flores*, 595 N.W.2d at 869 (emphasis added). We concluded the proffered evidence was insufficient because (1) the evidence only placed the third party “in the vicinity” of the crime at a different time of day; (2) the third party had “a strong alibi” during the crucial time of the events; (3) “there was no scientific evidence to connect” the third party to the scene; (4) none of the “several articles missing” from the victim’s home were with the third party; and (5) the potentially incriminating details surrounding drug-related threats were not implicated in the case because the murder was “inconsistent with a drug-related murder.” *Id.*

Similarly, in *Williams*, along with the third party’s lack of presence at the scene, we concluded that there was “substantial affirmative evidence that [the third party] did not commit the charged crimes”—including that the defendant “admitted to having committed the charged crimes” and that the eyewitness to the crime identified the defendant. *Williams*, 593 N.W.2d at 234. We affirmed the district court’s decision to suppress the evidence in *Williams* “in light of the overwhelming” evidence of the defendant’s guilt. *Id.* These cases show the *Hawkins* test operating as intended, not as posing a growing or

535 N.W.2d 667, 669–71 (Minn. App. 1995); *State v. Erickson*, No. A11-1418, 2012 WL 2873950, at *3–5 (Minn. App. July 16, 2012).

insurmountable barrier for defendants.⁷ And even if these cases were examples of erroneous results, two examples in nearly 50 years is not a sufficiently strong basis for departure.

* * *

The *Hawkins* test has provided a workable framework to guide courts as they determine whether to admit alternative-perpetrator evidence for nearly 50 years. The concerns that drove the creation of the test are just as relevant today. Because I weigh heavily the institutional values of stability and predictability in the law, I would not use our inherent authority and disregard stare decisis to abandon the *Hawkins* alternative-perpetrator test.

McKEIG, Justice (concurring in part and dissenting in part).

I join in the concurrence and dissent of Chief Justice Hudson.

MOORE, III, Justice (concurring in part and dissenting in part).

I join in the concurrence and dissent of Chief Justice Hudson.

⁷ The court characterizes my argument as asserting only that the evidence in these two cases was weak. Not so. *Flores* and *Williams* are examples of courts properly applying the *Hawkins* test and concluding that the evidence offered did not meet the “inherent tendency to connect” standard. The cases are not illustrative of the *Hawkins* test being overly stringent or onerous to apply.