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Minn. Stat. § 480A.08, subd. 3 (2018).

STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1423

State of Minnesota,
Respondent,

vs.

Anthony John Sawina,
Appellant.

Filed December 10, 2018
Affirmed
Smith, Tracy M., Judge

Hennepin County District Court
File No. 27-CR-16-19465

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

Michael O. Freeman, Hennepin County Attorney, Kelly O'Neill Moller, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Bradford Colbert, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Johnson, Judge; and Smith, Tracy M., Judge.

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

SMITH, TRACY M., Judge

Appellant challenges his convictions for two counts of attempted first-degree murder and three counts of second-degree assault, arguing that the state failed to prove that

he intended to kill or premeditated killing anyone and that the jury should not have received a supplemental instruction on transferred intent. He also challenges his sentence, arguing that the five consecutive sentences imposed by the district court exaggerate the criminality of his conduct. In a pro se brief, Sawina contends that his confrontation-clause right and his right to effective assistance of counsel were violated. Because sufficient evidence supports appellant's convictions and the district court did not abuse its discretion either in giving a supplemental instruction on transferred intent or in sentencing appellant, we affirm.

FACTS

Appellant Anthony Sawina and J.J., an acquaintance, left a bar early in the morning of June 29, 2016, with a group of people. Sawina was carrying a gun for which he did not have a permit. The group encountered five men, all practicing Muslims observing Ramadan and attired in qamis. Someone in the group made a comment about wearing a dress, and one of the men in the group said, "F--- Muslims."

The Muslim men got into their car.[1] As they began to drive off, the driver, A.H., pointed out Sawina and J.J., saying they were with the group that made the offensive comment about Muslims. A.H. stopped the car and asked Sawina and J.J. about the comment. Sawina and J.J. walked toward the car, and J.J. said, "It wasn't us" and "I don't have anything against Muslims." Sawina, however, approached A.H. and said, 'What if it

[1] The five men in the car were the driver, A.H.; the frontseat passenger, H.A.; and the backseat passengers, A.Y. (behind the driver), A.A. (in the middle), and H.G. (behind the frontseat passenger).

was me?" Someone in the backseat answered, "You didn't say it. Your friend [i.e., J.J.] just said you didn't." Sawina, standing outside the driver's door, said, "Well, it was me. What are you going to do about it?" The discussion escalated.

Sawina then said that he had a right to carry a gun, that he was going to kill the men in the car, and that they should get out of the car. He pulled out his gun. Frontseat passenger H.A. got out of the car and ran away. Sawina moved to the front of the car and pointed his gun at H.A., then moved back along the right side of car, told right-backseat passenger H.G., who had opened the right rear door and was getting out, to get back in the car, and pointed the gun at him. H.G. told A.H. to start driving, but A.H. had difficulty getting the car in gear; he was bent down in his seat. When the car started moving, left-backseat passenger A.Y. opened his door and ran away. Sawina fired two bullets through the open right rear door. Both H.G. and middle-backseat passenger A.A. received bullet wounds in the leg. One bullet lodged in A.A.'s leg; the other went through the windshield. The bullet that struck H.G. went through his leg.

Sawina ran from the scene. He was arrested about three weeks later and charged with five counts of second-degree assault. Respondent State of Minnesota (the state) offered a sentence of 36 months in prison for each count, served consecutively, totaling 180 months. Sawina refused the offer.

The state then amended the complaint, adding two counts of attempted first-degree premeditated murder (as to A.A. and H.G., the two backseat passengers who were shot) and two counts of attempted second-degree intentional murder (as to those same victims) to the five counts of second-degree assault (as to all five men in the car). A jury found

Sawina guilty on all nine counts; three counts as to A.A., three counts as to H.G., and one count each as to A.H., H.A., and A.Y. The state in its memorandum on sentencing said that the attempted first-degree murder counts as to A.A. and H.G. subsumed the other counts as to them.

Sawina was therefore sentenced on five counts: attempted first-degree murder of A.A. and H.G., and second-degree assault against A.H., H.A., and A.Y. His criminal history score was zero, which made his presumptive sentence for each count of attempted first-degree murder 180 months in prison, with a range of 153 to 216 months.

The state proposed a bottom-of-the-box sentence of 153 months for each of the two attempted first-degree murder convictions, served consecutively, and 36 months for each of the second-degree assault convictions, served concurrently, for a total of 306 months (25.5 years). The district court sentenced Sawina to 468 months (39 years): the presumptive 180 months for each attempted first-degree murder conviction and 36 months for each second-degree assault conviction, all consecutive.

This appeal follows.

D E C I S I O N

I. The evidence is sufficient to support the attempted first-degree murder convictions.

"Whoever does any of the following is guilty of murder in the first degree and shall be sentenced to imprisonment for life: (1) causes the death of a human being with premeditation and with intent to effect the death of the person or of another . . . ." Minn. Stat. § 609.185 (2014). Sawina argues that the evidence is insufficient to support his

attempted first-degree murder convictions because the state did not prove two elements—intent and premeditation—beyond a reasonable doubt.

Intent means that a defendant "either has a purpose to do the thing or cause the result specified or believes that the act, if successful, will cause that result." Minn. Stat. § 609.02, subd. 9(4) (2014). "'[P]remeditation' means to consider, plan or prepare for, or determine to commit, the act . . . prior to its commission." *State v. Petersen*, 910 N.W.2d 1, 7 (Minn. 2018) (alteration in original) (quoting Minn. Stat. § 609.18 (2016)). To show premeditation, "the state must always prove that, after the defendant formed the intent to kill, some appreciable time passed during which the consideration, planning, preparation or determination required by Minn. Stat. § 609.18 prior to the commission of the act took place." *State v. Moore*, 481 N.W.2d 355, 361 (Minn. 1992).

Generally, when the state must prove a defendant's state of mind, it does so with circumstantial evidence. *State v. Griffin*, 887 N.W.2d 257, 264 (Minn. 2016) ("It is rare for the State to establish a defendant's state of mind through direct evidence."); *State v. Hughes*, 749 N.W.2d 307, 312 (Minn. 2008) ("Because it is a state of mind, premeditation is generally proven through circumstantial evidence, and is often inferred from the totality of circumstances surrounding the killing." (quotations and citation omitted)). An appellate court will affirm a conviction based on circumstantial evidence if the circumstances proved are consistent with the hypothesis that the defendant is guilty and inconsistent with any rational hypothesis except that of guilt. *See State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010). The supreme court has explained the analysis as follows:

> First, we must identify the circumstances proved, giving deference to the jury's acceptance of the proof of these circumstances and rejection of evidence in the record that conflicted with the circumstances proved by the State. Second, we independently examine the reasonableness of all inferences that might be drawn from the circumstances proved, including inferences consistent with a hypothesis other than guilt.

State v. Anderson, 789 N.W.2d 227, 241-42 (Minn. 2010).

Here, the state presented direct evidence of Sawina's determination and intent—all five victims testified that Sawina said, "Get out, I'm going to kill you guys." *See State v. Horst*, 880 N.W.2d 24, 40 (Minn. 2016) (characterizing the defendant's statement, "I want him dead," as direct evidence of mens rea); *see also State v. Clark*, 739 N.W.2d 412, 421 n.4 (Minn. 2007) (explaining that direct evidence is "[e]vidence that is based on personal knowledge or observation and that, if true, proves a fact without inference or presumption" (alteration in original)). In addition, the state proved the following circumstances:

- Sawina pulled out his loaded gun while confronting the men in the car.
- When H.A. ran away, Sawina pointed his gun at him.
- When H.G. attempted to flee, Sawina told him to get back in the car.
- Sawina aimed his gun at H.G.
- Sawina positioned himself at the open rear passenger door.
- As the car started to drive away, Sawina fired multiple shots through the open rear passenger door.
- A bullet struck the windshield, where driver A.H.'s head would have been had he not ducked.

- A.A. and H.G. were shot.
- No bullets struck the car from the outside.
- Sawina testified that he was bracing himself so he could aim and that he aimed well through the open car door.

The direct evidence and the circumstances proved are consistent with the jury's findings of intent and premeditation. With respect to intent, a jury may infer that a defendant intends the natural and probable consequences of his actions. *State v. Johnson*, 616 N.W.2d 720, 726 (Minn. 2000). More specifically, the jury may infer a person's intent to kill from the nature of the killing. *Griffin*, 887 N.W.2d at 265 (holding that the evidence was sufficient to establish intent where the defendant brought a loaded gun to a robbery, fired it in one victim's direction, paused to regain balance, aimed at another victim, and pulled the trigger when the gun was in close proximity to that victim's chest).

Premeditation can be based on events that immediately precede a killing. In *Moore,* the supreme court held, "[T]he testimony of defendant's daughter . . . that she heard [him] say [to the victim], 'Good-bye . . . I am going to kill you . . .' before she heard the shot permits an inference that defendant had sufficient time to contemplate his actions before carrying them out" and is consistent with intentional, premeditated murder. 481 N.W.2d at 362; *State v. Palmer*, 803 N.W.2d 727, 737 (Minn. 2011); *see also State v. Fort*, 768 N.W.2d 335, 343 (Minn. 2009) (concluding that burglar's statements to victim that "if you don't shut up, I'm going to kill you" and "now you're going to die" verbalized the planning activity and were sufficient to prove premeditation). And in *Palmer*, the supreme court

determined that evidence that "the shooter took careful aim" was also indicative of premeditation. *Palmer*, 803 N.W.2d at 737.

Consistent with this case law, Sawina's statement that he was going to kill the men in the car and the evidence of his positioning himself, aiming, and firing into the car and through the front windshield where A.H.'s head would have been had A.H. not ducked are consistent with the hypotheses of intent to kill and of the consideration, planning, preparation or determination that shows premeditation.

Sawina argues that the evidence is also consistent with the hypothesis that he did not have "the intent to kill a person." But that hypothesis is not rational, given his statement and actions. Sawina also argues that the evidence is consistent with his shooting into the car "reflexively" and not with premeditation. But the evidence did not show that Sawina was acting "reflexively" or reacting to provocation by the men in the car. Instead, the men in the car were trying to get away from Sawina when he showed his weapon and walked around the car, positioned himself, aimed, and started shooting. His hypothesis that he did not consider whether to kill, or prepare or determine to kill before he started shooting is not rational.

The evidence was sufficient to support the convictions of attempted first-degree murder.

II. The district court did not err in giving a supplemental jury instruction on transferred intent.

We review a district court's jury instructions for an abuse of discretion. *State v. Lory*, 559 N.W.2d 425, 427 (Minn. App. 1997), *review denied* (Minn. Apr. 15, 1997).

The jury was instructed that the counts of attempted first-degree premeditated murder required the state to prove that Sawina attempted to cause the death of the victim named in the count "or another person." The jury was also told, in the state's closing argument, that evidence from the windshield showed Sawina pointed his gun at A.H., who had ducked to avoid being hit in the head, and that, if the jury believed Sawina "[was] trying to kill [A.H.] and then . . . [shot] at the other people [i.e., A.A. and H.G.]," his guilt was established.

But the verdict forms did not mention "another person"; they asked the jurors to determine whether Sawina was guilty or not guilty of "attempted murder in the first degree—premeditated ([H.G.])" or of "attempted murder in the first degree—premeditated ([A.A.])."

While deliberating, the jurors asked the district court whether, if they decided Sawina was guilty of the attempted first-degree murder of "one other person, i.e., not [H.G.] or [A.A.]," they should find him guilty of the attempted first-degree murder of both A.A. and H.G., or just A.A., or just H.G. In response to the jurors' questions, the district court gave an instruction on transferred intent, telling them:

> Transferred intent allows evidence of an attempt to harm someone to transfer to the person actually harmed when there is a possibility the person harmed was not the intended recipient of the specific act. If the defendant acted with premeditation and with the intent to cause the death of a person, the elements of premeditation and intent are [sic] to kill are satisfied and may be transferred to another victim, even if the

> defendant did not intend to harm [that] person. This concept is known as transferred intent.[2]

Sawina infers from the jurors' questions that they had decided Sawina had not intended to kill A.A. or H.G. but intended to kill A.H., and that the jury transferred that intent to find him guilty of the attempted first-degree premeditated murder of A.A. and H.G. He argues in his brief that "the doctrine of transferred intent cannot be used in a case involving attempted premeditated murder."

But this court has explicitly rejected "[the] contention that there can be no transferred intent from the attempted murder of a specific victim." *State v. Bakdash*, 830 N.W.2d 906, 915 (Minn. App. 2013), *review denied* (Minn. Aug. 6, 2013). In *Bakdash*, the defendant ran down several pedestrians with his car. *Id.* at 910-11. We affirmed the defendant's conviction of attempted murder of the pedestrians that he injured even though he may have intended to kill someone else. *Id.* at 914. Rejecting the defendant's challenge to the jury instructions, we wrote, "In light of evidence that appellant intended to cause the death of a person, the district court did not abuse its discretion by including the statutory language implicating transferred intent in the jury instructions." *Id.* at 915; *see also State v. Cruz-Ramirez*, 771 N.W.2d 497, 507 (Minn. 2009) ("[T]ransferred intent allows evidence of an intent to harm 'someone' to transfer to the person actually harmed when

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[2] Appellant's counsel objected, saying that the state had an opportunity to request this instruction earlier and that, because the state did not do so, the jury had begun deliberations without considering transferred intent. He also said that he had had no time to consider or research the instruction, but he declined the district court's offer of more time to prepare his opposition to the instruction, saying that he opposed the giving of any additional instruction because of what giving one would imply to the jury.

there is a possibility the victim was not the intended recipient of the specific act.") (citing *State v. Holliday*, 745 N.W.2d 556, 562 (Minn. 2008) (affirming first-degree attempted-murder conviction based on transferred-intent doctrine)).[3]

Here, it is possible that A.A. and H.G. were not the intended recipients of the shots that Sawina fired. But, under *Bakdash*, the doctrine of transferred intent applies. Indeed, Sawina does not dispute that giving the instruction was consistent with *Bakdash*, and he concedes that the instruction on transferred intent was a correct statement of the law. "Only an instruction that materially misstates the law is error." *Cruz-Ramirez*, 771 N.W.2d at 507.

Bakdash also refutes Sawina's argument that the district court's "instruction on transferred intent was, in effect, a constructive amendment of the State's complaint." *Bakdash* rejects the view that "the essential elements of the crimes were modified upon presentation of the theory of transferred intent to the jury" because there is "no authority supporting the proposition that variance of the particular theory behind criminal charges, such as transferred intent, constitutes an impermissible constructive amendment in violation of Minn. R. Crim. P. 17.05." 830 N.W.2d at 916.

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[3] *See also State v. Glass*, No. A14-2003, 2015 WL 9263956, *2 (Minn. App. Dec. 21, 2015) (citing *Cruz-Ramirez*, *Holliday*, and *Bakdash*, and holding that where, as here, there was no murder but only attempted murder, the intent to attempt murder of a specific individual could transfer to another victim injured in the attempt). As an unpublished decision of this court, *Glass* is without precedential value under Minn. Stat. § 480A.08, subd. 3, but its similarity to this case makes it instructive.

The district court did not abuse its discretion in giving the jury a supplemental instruction on transferred intent.

III. Sawina's sentence is not an abuse of the district court's discretion.

A district court's decision to impose consecutive sentences is reviewed for an abuse of discretion. *State v. Ali*, 895 N.W.2d 237, 247 (Minn. 2017). This court will not interfere with a district court's discretion unless the sentence is disproportionate to the crime or unfairly exaggerates the criminality of the defendant's conduct. *State v. Vang*, 847 N.W.2d 248, 264 (Minn. 2014). Nor will this court generally "review a district court's exercise of its discretion to sentence a defendant when the sentence imposed is within the presumptive guidelines range." *State v. Delk*, 781 N.W.2d 426, 428 (Minn. App. 2010).

Sawina's criminal history score was zero. His presumptive sentence for two counts of attempted first-degree murder was 180 months each, with a range of 153 to 216 months. Minn. Sent. Guidelines 2.G.11 (2014). His presumptive sentence for three counts of second-degree assault was a minimum 36 months in prison for each. Minn. Stat. § 609.11, subd. 5(a) (2014). He was sentenced to five consecutive sentences, totaling 468 months (180+180+36+36+36).[4] Sawina does not dispute that the consecutive sentences were permissive, and he has the burden of showing that the consecutive sentencing unfairly

[4] The shortest possible guideline consecutive sentence for each of the five convictions would have been 414 months (153+153+36+36+36); the longest consecutive guideline sentence would have been 540 months (216+216+36+36+36).

exaggerates the criminality of his conduct. *See State v. Hough*, 585 N.W.2d 393, 398 (Minn. 1998).[5]

To determine whether a sentence unfairly exaggerates the criminality of a defendant's conduct, appellate courts examine sentences imposed on similarly situated defendants to consider whether the sentence is commensurate with culpability. *State v. Yang*, 774 N.W.2d 539, 563 (Minn. 2009). The salient points of Sawina's situation are: (1) his shots killed no one; (2) his shots wounded two people; and (3) he was convicted of two counts of attempted first-degree murder and three counts of assault. There appears to be no published case law on sentencing defendants similarly situated to Sawina; we will therefore address both the published and the unpublished cases on which the parties rely.

The state cites two unpublished decisions that, while lacking precedential value under Minn. Stat. § 480A.08, subd. 3, affirm consecutive sentences in situations similar to Sawina's. *State v. Freeman*, No. A13-1037, 2014 WL 996764, at *1 (Minn. App. Mar. 17, 2014) involved a defendant who pleaded guilty to one count of second-degree murder and three counts of first-degree assault; he was sentenced to 336 months on the murder count and to 86 months on each of the assault counts, all consecutive, for a total of 594 months. "[A]ppellant's assault victims suffered skull fractures and the loss of an eye. We conclude[d] that appellant's sentence [did] not unfairly exaggerate the criminality of his conduct." *Id.* at *3.

[5] The district court's sentence was more than 50% greater than the sentence sought by the state.

State v. Thompson, No. A10-1508, 2011 WL 4435307, at *2 (Minn. App. Sept. 26, 2011) involved a defendant convicted, in relevant part, of one count of attempted first-degree premeditated murder and two counts of second-degree assault; he was sentenced to 216 months on the attempted murder and 36 months on each of the assaults, all consecutive, for a total of 288 months. "[E]ach [offense] involved a distinct act directed toward each victim. The consecutive sentences for offenses against the three victims [did] not unfairly exaggerate the criminality of appellant's conduct, and the district court did not abuse its discretion by imposing consecutive sentences." *Id.* at *6. These cases support the use of consecutive sentencing in cases such as Sawina's.[6]

Sawina relies on *State v. Goulette*, 442 N.W.2d 793, 794-95 (Minn. 1989) (reducing defendant's sentence of 251 months to 214 months because it unfairly exaggerated the criminality of his conduct). But *Goulette* is distinguishable: the defendant in that case was sentenced to "the longest term possible without departing from the sentencing guidelines," and this court affirmed. *Id.* at 794. For Sawina, the longest term possible under the guidelines was 540 months, and the shortest was 414 months. The median between these

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[6] The state also cites six published cases that are distinguishable because they involved convictions of and life sentences for murder, so additional sentences imposed for murder, whether consecutive or concurrent, had no real effect: *Ouk v. State*, 847 N.W.2d 698, 700 n.4 (Minn. 2014) (two life sentences for murder); *Vang*, 847 N.W.2d at 258 (life sentence for first-degree murder); *Yang*, 774 N.W.2d at 551 (two life sentences for aiding and abetting first-degree premeditated murder for the benefit of a gang); *Cruz-Ramirez*, 771 N.W.2d at 504 (life sentence with no possibility of release); *State v. Sanders*, 598 N.W.2d 650, 654 (Minn. 1999) (life imprisonment for first-degree murder); and *State v. Whittaker*, 568 N.W.2d 440, 453 (Minn. 1997) (life sentence for murder).

is 477 months; thus, Sawina's 468-month sentence is nine months less than the median guideline sentence.[7]

Sawina also relies on three other published opinions and four unpublished opinions. The three published opinions are distinguishable because none of them involved a victim wounded by the defendant's shots: *State v. Ferguson*, 808 N.W.2d 586, 589 (Minn. 2012) (defendant, convicted of one count of drive-by shooting at an occupied building and eight counts of second-degree assault, sentenced to 39 months on the drive-by shooting, 36 months, consecutive, on one assault conviction, and 36 months, concurrent, on the other seven assault convictions, for a total of 75 months; affirmed); *Hough*, 585 N.W.2d at 397 (defendant, convicted of six counts of assault with a dangerous weapon for firing seven shots into a home occupied by six people, sentenced to two consecutive 72-month sentences, executed, for two children sleeping in a bedroom hit by bullets, and four consecutive 36-month sentences, stayed, for the other victims, for a total of 144 months; affirmed); and *State v. Nunn*, 411 N.W.2d 214, 216 (Minn. App. 1987) (defendant, convicted of one count of attempted second-degree murder and six counts of second-degree assault, sentenced to 81 months on attempted murder, 60 months, consecutive, on two assault convictions, and 60 months, concurrent, on the other two, for a total of 201 months; affirmed). None of these cases supports reducing Sawina's sentence.

The four unpublished opinions are distinguishable because they involve sentences for robbery or burglary, not attempted murder. *State v. Wiley*, No. A09-135, 2009 WL

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[7] 477+63=540; 477–63=414.

3255600 (Minn. App. Oct. 13, 2009) (defendant sentenced to 48 months for one count of burglary and 36 months for each of two counts of second-degree assaults, all consecutive, for a total of 120 months; affirmed), *review denied* (Minn. Dec. 15, 2009); *Nelson v. State*, No. A08-0462, 2009 WL 817915 (Minn. App. Mar. 31, 2009) (defendant convicted of being an ineligible person in possession of a firearm and five counts of aggravated robbery was sentenced to 96 months; affirmed), *review denied* (Minn. June 30, 2009); *State v. Baldwin*, No. CX-96-2336, 1997 WL 632889 (Minn. App. Oct. 14, 1997) (defendant convicted of first-degree aggravated robbery, first degree robbery, and seven counts of second-degree assault and received consecutive sentences totaling 324 months; affirmed); *State v. Zaycheck*, No. CX-89-1135, 1989 WL 138956 (Minn. App. Nov. 21, 1989) (defendant convicted of four counts of second-degree assault and received three consecutive and one concurrent sentence totaling 180 months; affirmed), *review denied* (Minn. Jan. 12, 1990). All these cases affirm consecutive sentencing and provide no basis for reducing Sawina's sentence.

The district court's sentence was below the median of the guidelines range and was not an abuse of discretion.

IV. Sawina's rights under the confrontation clause were not violated.

Sawina did not raise this issue during trial, so the standard of review is plain error, which requires that there be (1) an error, (2) that is plain, and (3) that affected the defendant's substantial rights. *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998). Sawina does not show an error.

Each of the five victims testified that he did not have a gun with him the night of the incident. Sawina argues, however, that his confrontation-clause rights were violated because his counsel was not permitted to recall an investigator to ask him whether H.G. had told him that A.H. had a permit to carry a gun, or to recall A.H. and H.G. to ask them if they had told Sawina that A.H. had a gun. The district court denied permission to recall the investigator to testify because the investigator's testimony as to whether A.H. had a permit would have been hearsay. The district court granted permission to recall A.H. and H.G., but Sawina's counsel said that, although subpoenas were drafted and a private investigator "made an effort into the late evening" to locate them, they were unavailable.

Moreover, it was established that A.H. did not have a permit or a gun, and each of the victims was asked if he had had a gun with him the night of the incident. Sawina's argument that, under *Crawford v. Washington*, 541 U.S. 36, 124 S. Ct. 1354 (2004), this "created a partial confrontation clause violation" lacks merit.

V. Sawina's claim of ineffective assistance of counsel fails.

An appellate court reviews "a claim of ineffective assistance of counsel de novo because such a claim involves a mixed question of law and fact." *Hawes v. State*, 826 N.W.2d 775, 782 (Minn. 2013).

Sawina argues that he was denied effective assistance of counsel because his counsel (1) did not object to the state's motion to prohibit questioning witnesses as to whether A.H. had a permit to carry a gun and (2) did not recall A.H. and H.G. to testify. But the transcript shows that, in discussion with the prosecutor and the court, Sawina's counsel explained the efforts made to locate A.H. and H.G. so they could be recalled to

testify, and that he discussed at length his desire to produce evidence that one of the victims had a permit if not a gun to corroborate Sawina's testimony that A.H. had claimed to have a permit and that Sawina shot his gun in self-defense, believing that A.H. was reaching for a gun.

Finally, Sawina does not show that he was prejudiced by either the alleged confrontation-clause violation or ineffective assistance of counsel. There was ample evidence that Sawina committed the crimes of which he was accused; the absence of corroboration of his testimony that one of his victims might have had a permit to carry a gun was irrelevant to his convictions.

Affirmed.