

DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

BRIAN JOHN WILSON,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

No. 2D2025-0470

October 23, 2026

Appeal from the Circuit Court for Pinellas County; Philip J. Federico,
Judge.

Blair Allen, Public Defender, and Maureen E. Surber, Assistant Public
Defender, Bartow, for Appellant.

James Uthmeier, Attorney General, Tallahassee, and William C.
Shelhart, Assistant Attorney General, Tampa, for Appellee.

SILBERMAN, Judge.

Brian John Wilson was charged by third amended information with attempted sexual battery on a mentally defective person and sexual battery on a mentally defective person. The victim is a developmentally disabled adult whose mental ability is childlike. Following a jury trial, Wilson was found guilty of battery, a lesser included offense to attempted sexual battery, and was acquitted of sexual battery. Based on Wilson's

prior record, he was sentenced to ten years' imprisonment as a habitual felony offender.

Wilson challenges his judgment and sentence and raises three issues on appeal, none of which supports reversal. We write to address two of the issues. First, he contends that the trial court erred by allowing the mentally disabled victim to testify at trial holding a teddy bear. Second, he argues that his constitutional right to trial by jury was violated because he was tried by a six-person jury rather than a twelve-person jury.

I. Victim Testifying while Holding a Teddy Bear

At trial, the victim took the witness stand holding an approximately twelve-by six-inch teddy bear. Over objection, the trial court allowed the victim to testify holding the bear. Absent citations to any authority in support of his position, Wilson asks this court to conclude that the trial court abused its discretion by overruling his objection. Although the victim is developmentally disabled, he argues that the "witness in this case is an adult" and that the "jury was introduced to a witness who immediately evinced sympathy to the detriment of a fair trial for Wilson."

We begin by noting that "matters relating to examination of witnesses are within the trial court's sound discretion." *Tormey v. Trout*, 748 So. 2d 303, 306 (Fla. 4th DCA 1999) (citing *Metropolitan Dade County v. Zapata*, 601 So. 2d 239, 243 (Fla. 3d DCA 1992)). And Florida law provides special protections in proceedings involving a person with an intellectual disability. Under section 92.55(5), Florida Statutes (2025), a trial court "may set any other conditions it finds just and appropriate when taking the testimony of . . . a person who has an intellectual disability . . . in any proceeding involving a sexual offense."

While we, too, have been unable to find Florida case law addressing this precise issue, other courts have concluded that a trial court does not abuse its discretion when it allows victims to hold teddy bears or comfort items during trial testimony. *See, e.g., State v. Richter*, 27 N.W.3d 777, 783-84 (S.D. 2025); *State v. Powell*, 318 S.W.3d 297, 303-04 (Mo. Ct. App. 2010); *see also State v. Brick*, 163 Wash. App. 1029, at *2 (Wash. Ct. App. 2011) (concluding that "[n]o authority requires the court to hold a hearing or to make a finding of necessity" when a victim testifies holding a "security object"). Under the plain language of section 92.55(5), we conclude the trial court did not abuse its discretion by allowing the mentally disabled victim to testify at trial while holding the teddy bear.

II. Constitutional Challenge

After Wilson filed his initial brief and the State filed its answer brief, he filed a motion requesting leave to file a supplemental brief to challenge his conviction by a six-person jury. The impetus for his motion is a recent case in which it appears that the United States Supreme Court will reconsider whether it is a violation of the United States Constitution for a criminal case to be heard by a six-person jury rather than a twelve-person jury. *See Kian v. Florida*, 421 So. 3d 439 (Fla. 4th DCA 2025), *cert. granted*, 146 S. Ct. 2732 (2026). We granted his motion and have received the parties' supplemental briefs.

Wilson argues that the United States Constitution requires a twelve-person jury in criminal cases and that section 913.10, Florida Statutes (2025), which authorizes a six-person jury to try noncapital criminal cases, is unconstitutional. Wilson acknowledges that he did not raise this issue in the trial court or in his initial briefing, but he argues that a facial constitutional challenge can be raised for the first time on

appeal. *See Chang v. State*, 423 So. 3d 437, 448 n.4 (Fla. 2d DCA 2025) (concluding that the appellant was not precluded from raising a facial constitutional challenge for the first time on appeal because when he filed his initial brief, no appellate court had held the challenged statute to be unconstitutional (citing *Harvey v. State*, 848 So. 2d 1060, 1063-64 (Fla. 2003))). Moreover, "[a] facial challenge to a statute's constitutional validity may be raised for the first time on appeal only if the error is fundamental." *State v. Johnson*, 616 So. 2d 1, 3 (Fla. 1993) (citing *Trushin v. State*, 425 So. 2d 1126 (Fla. 1982))). Under existing law, no fundamental error occurred here. *See Jack v. State*, 349 So. 3d 925, 927 (Fla. 1st DCA 2022).

Wilson recognizes that the United States Supreme Court has held that the "refusal to impanel more than the six [jury] members provided for by Florida law" does not violate a defendant's Sixth Amendment rights as applied to the States through the Fourteenth Amendment. *See Williams v. Florida*, 399 U.S. 78, 86 (1970); *see also Gonzalez v. State*, 982 So. 2d 77, 85-86 (Fla. 2d DCA 2008) ("[T]his court is bound by existing Supreme Court precedent to hold that the six-person jury that convicted him was not, by sheer virtue of its size, constitutionally deficient."); *Chavers v. State*, 359 So. 3d 846, 847-48 (Fla. 1st DCA 2023) ("[F]ive decades ago, the United States Supreme Court upheld the constitutionality of Florida's six-person jury system. . . . *Williams* was correctly decided and remains controlling precedent today."). Nevertheless, based on the Supreme Court's grant of certiorari in *Kian v. Florida*, Wilson argues that we should hold that section 913.10 is unconstitutional and reverse his conviction.

In response, the State makes several arguments, the key one being that existing precedent precludes granting relief to Wilson. We agree and

reject Wilson's argument that we are free to disregard existing precedent in order to hold that he was entitled to a twelve-person jury and that section 913.10 is unconstitutional. *See Serrano-Delgado v. State*, 392 So. 3d 251, 254 (Fla. 2d DCA 2024) ("We are bound by precedent Therefore, the use of a six-person jury at Mr. Serrano-Delgado's [noncapital case] did not constitute a violation of federal or Florida constitutional rights."); *Morales-Alaffita v. State*, 376 So. 3d 791, 792 (Fla. 2d DCA 2023) ("Florida law permits, and perhaps even requires, a six-person jury in all felony cases for which death is not a possible penalty." (quoting *Gonzalez*, 982 So. 2d at 81)).

III. Conclusion

For the foregoing reasons, Wilson is not entitled to relief. Accordingly, we affirm his judgment and sentence.
Affirmed.

LUCAS, C.J., and SMITH, J., Concur.

Opinion subject to revision prior to official publication.