

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

NECKSON FAUSTIN,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

Nos. 4D2024-2667 and 4D2024-2669

[October 7, 2026]

Consolidated appeals from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Michael Lynch, Judge; L.T. Case Nos. 062017CF005804A88810 and 062020CF009239A88810.

Daniel Eisinger, Public Defender, and Paul Edward Petillo, Assistant Public Defender, West Palm Beach, for appellant.

James Uthmeier, Attorney General, Tallahassee, and Joseph Mollica, Assistant Attorney General, West Palm Beach, for appellee.

CIKLIN, J.

In these consolidated appeals, Neckson Faustin (“defendant”) challenges his convictions and sentences for two counts of vehicular homicide and one count of reckless driving causing property damage (the “substantive case”), as well as a related order revoking probation and imposing sentence (the “VOP case”). We reverse the convictions and sentences in the substantive case and remand for a new trial, because the trial court admitted a detective’s specialized opinion testimony estimating the vehicles’ speeds as lay investigative testimony, without conducting the expert testimony analysis required by section 90.702, Florida Statutes (2024). The state has not established beyond a reasonable doubt that the error did not contribute to the verdict. We affirm the trial court’s rulings on the defendant’s remaining claims, including his challenge to the six-person jury. We also affirm the order revoking probation, but vacate the VOP sentence and remand for resentencing using a corrected scoresheet.

At the outset, we affirm the trial court’s use of a six-person jury. *See Guzman v. State*, 350 So. 3d 72 (Fla. 4th DCA 2022), *rev. denied*, No. SC22-

1597, 2023 WL 3830251 (Fla. June 6, 2023); *Cunningham v. Florida*, 144 S. Ct. 1287 (2024) (denying petition for writ of certiorari challenging Florida’s use of six-member juries). *But see Kian v. State*, 421 So. 3d 439 (Fla. 4th DCA 2025), *cert. granted*, No. SC25-6623, 2026 WL 1718018 (June 15, 2026).

At trial, Detective Michael Wiley, a lay witness who acknowledged he was not an accredited accident reconstructionist, was permitted to testify as to the speeds of the vehicles involved in the crash based on his calculation using what he called a “momentum formula.” The defendant argues that the trial court erred in permitting this testimony, as it was in the vein of expert opinion testimony, Wiley was not an expert, and the opinion did not satisfy the requirements of section 90.702, Florida Statutes. The state essentially concedes error, as it does not address the merits of the defendant’s argument and instead argues any error was harmless. *See Stukins v. State*, 418 So. 3d 168, 174 (Fla. 4th DCA 2025) (“The State does not address Defendant’s argument . . . and instead directly proceeds to argue the error was harmless. ‘As such, we treat [the State’s] failure to address this issue in [its] answer brief as a concession’ [of error].” (second and third alterations in original) (quoting *Agee v. Brown*, 73 So. 3d 882, 886 (Fla. 4th DCA 2011))).

The trial court ruled that Detective Wiley could opine on the vehicles’ speeds, as he was merely testifying about his investigation. But Wiley did more than that. He opined as to the vehicles’ speeds based on a formula which he apparently learned during his training. This is not permissible lay opinion testimony. *See Fino v. Nodine*, 646 So. 2d 746, 748-49 (Fla. 4th DCA 1994) (“[o]pinion testimony of a lay witness is only permitted if it is based on what the witness has personally perceived,” and “typically involves matters such as distance, time, size, weight, form and identity”); § 90.701, Fla. Stat. (2024) (providing that a lay witness may give opinion testimony when “[t]he opinions and inferences do not require a special knowledge, skill, experience, or training”).

Section 90.702 governs expert opinion testimony:

If scientific, technical, or other specialized knowledge will assist the trier of fact in understanding the evidence or in determining a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify about it in the form of an opinion or otherwise, if:

(1) The testimony is based upon sufficient facts or data;

- (2) The testimony is the product of reliable principles and methods; and
- (3) The witness has applied the principles and methods reliably to the facts of the case.

§ 90.702, Fla. Stat. (2024). Section 90.702 “codifies the *Daubert* standard.” *Kemp v. State*, 280 So. 3d 81, 88 (Fla. 4th DCA 2019). “Under *Daubert*, a trial judge has a gatekeeping role to ‘ensure that any and all scientific testimony or evidence admitted is not only relevant, but reliable.’” *Id.* (quoting *Daubert v. Merrell Dow Pharm.*, 509 U.S. 579, 589 (1993)). “A trial judge must make ‘a preliminary assessment of whether the reasoning or methodology underlying the testimony is scientifically valid and of whether that reasoning or methodology properly can be applied to the facts in issue.’” *Id.* (quoting *Daubert*, 509 U.S. at 592-93).

Here, the trial court did not conduct the assessment required by section 90.702. Instead, the trial court treated Detective Wiley’s speed calculation as part of his investigative testimony. Because Wiley’s calculation depended on specialized knowledge and methodology, it constituted expert opinion testimony subject to section 90.702.

Even assuming that momentum analysis may constitute a reliable methodology when properly performed, the state did not establish that Detective Wiley’s opinion rested on sufficient case-specific facts or data or that he reliably applied the methodology to the facts of this collision. Wiley used vehicle weights derived from averages found through internet searches, without accounting for weight differences between trim levels and vehicle styles. He calculated departure angles using Google Maps and a protractor, although he acknowledged that departure angles used in the momentum formula must be “very accurate.” He also assumed that the Corolla’s approach angle was zero because “[t]hat is how we are taught to do it when we use this formula.” Moreover, he could no longer produce the field sketch documenting how he arrived at his calculations.

The defense expert, Aaron Moss, an accredited accident reconstructionist trained in analyzing event data recorders, explained why these deficiencies mattered. Moss testified that Detective Wiley’s unscaled field sketch was insufficient to calculate speed. Moss also disputed Wiley’s assumption that the Corolla was traveling straight at impact, explaining that the video was too unclear to support that assumption and the event data recorder indicated otherwise. Finally, Moss testified that he had never encountered the use of averaged vehicle weights obtained through internet searches for a momentum calculation. According to Moss, Wiley

also used the wrong trim level for the Corolla, which affected its weight—an important variable in the formula.

The state argues that any error was harmless because the vehicles' event data recorders supplied speed information. However, testimony established that the data could not be reliably interpreted without independent accident reconstruction. Detective Wiley's speed calculations therefore did not merely duplicate the event-data-recorder evidence. His calculations purported to corroborate that evidence on an issue central to whether the defendant drove recklessly. Accordingly, the state has not demonstrated beyond a reasonable doubt that there is no reasonable possibility the erroneously admitted testimony contributed to the verdict. *See State v. DiGuilio*, 491 So. 2d 1129, 1135 (Fla. 1986); *cf. Selver v. State*, 568 So. 2d 1331, 1335 (Fla. 4th DCA 1990) (holding that the admission of hearsay was not harmless where the purportedly cumulative evidence came from a witness whose credibility had been impeached).

We affirm on the remaining arguments in the substantive case and will not discuss those issues further.

On the VOP case, the defendant requests that we reverse the revocation of probation, and either remand for reinstatement or a new VOP hearing. His request is based on the merits of the arguments which he raised in the substantive case. We find this argument is not adequately briefed. We agree, however, that based on our reversal for new trial on the substantive case, resentencing with a corrected scoresheet is required in the VOP case.

In sum, we reverse and remand for new trial in the substantive case based on the improper admission of Detective Wiley's opinion testimony. We affirm the revocation of probation but remand for resentencing with a corrected scoresheet.

Affirmed in part, reversed in part, and remanded.

GROSS and MAY, JJ., concur.

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Not final until disposition of timely-filed motion for rehearing.