[DO NOT PUBLISH]

In the United States Court of Appeals

For the Eleventh Circuit

No. 22-12515

JAMES B. RILEY,
as personal representative of the Estate of
Barrett Riley,

Plaintiff-Appellant,

versus

TESLA, INC,
d.b.a. Tesla Motors, Inc,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Florida

D.C. Docket No. 0:20-cv-60517-AOV

Before WILLIAM PRYOR, Chief Judge, and GRANT and LUCK, Circuit Judges.

PER CURIAM:

This case began with a tragic car accident. Eighteen-year-old Barrett Riley drove a 2014 Tesla Model S down state road A1A in Fort Lauderdale. Trying to pass his friend in another car, Barrett[1] drove 116 miles per hour into a curve and lost control. His Tesla hit two concrete curbs, two concrete walls, and a metal light pole. At some point, the car caught fire. And the fire caused Barrett's death.

Before the accident, Barrett's parents—James and Jenny Riley—told Tesla's mechanics to put a speed limiter on Barrett's Tesla. And they did. But Barrett took the car back to the shop and had the limiter removed.

James sued Tesla, Inc. on behalf of Barrett's estate. He brought a negligence claim for removing the speed limiter. And he brought products liability claims based on two design defects. He alleged Barrett's Tesla was defectively designed because its batteries' cell walls were not thick enough to stop from catching fire if there was a crash and because the pack that held the batteries

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[1] We use first names for the members of the Riley family to avoid confusion.

lacked fire retardant intumescent material to stop a fire from spreading.

Before trial, the district court struck James's battery expert's supplemental affidavit and excluded his opinion about the alleged cell wall thickness defect. Without the expert's opinion, the district court granted summary judgment for Tesla on James's products liability claims based on the cell wall thickness defect. The district court also granted summary judgment for Tesla on the products liability claims based on the lack of intumescent material because James did not present any evidence that this alleged defect caused Barrett's death.

The case went to trial on the remaining negligence claim based on the speed limiter. The jury returned a $10,500,000 verdict in James's favor but only found Tesla one percent at fault for the accident. The district court entered final judgment consistent with the jury's verdict.

James now appeals the district court's orders striking his expert's supplemental affidavit, excluding the expert's cell wall thickness opinion, and granting summary judgment for Tesla on James's products liability claims. After careful review, and with the benefit of oral argument, we affirm.

FACTUAL BACKGROUND

Barrett and His 2014 Tesla Model S

Barrett drove a 2014 Tesla Model S P85D, which was the highest performing Model S on the market. It had dual motors

with a combined 691 horsepower and could go zero to sixty miles per hour in 3.1 seconds. It was essentially an electric supercar.

Barrett liked to drive fast. Before the accident, he received a speeding ticket for driving 112 miles per hour in a fifty mile-per-hour zone. Another time, his parents caught him driving nearly 100 miles per hour. And he also took his Tesla to empty parking decks to go "drifting" (which is a form of racing where the driver "makes a controlled skid sideways through a turn"). *See Drifting*, MERRIAM-WEBSTER'S ONLINE DICTIONARY, https://www.merriam-webster.com/dictionary/drifting [https://perma.cc/NYN6-7873] (last visited Mar. 11, 2025).

After the ticket, in March 2018, Barrett's parents had Tesla's mechanics activate the car's speed limiter, which stopped the car from driving over eighty-five miles per hour. But a few weeks later, Barrett took the car back to the mechanics and had them remove the limiter.

The Accident

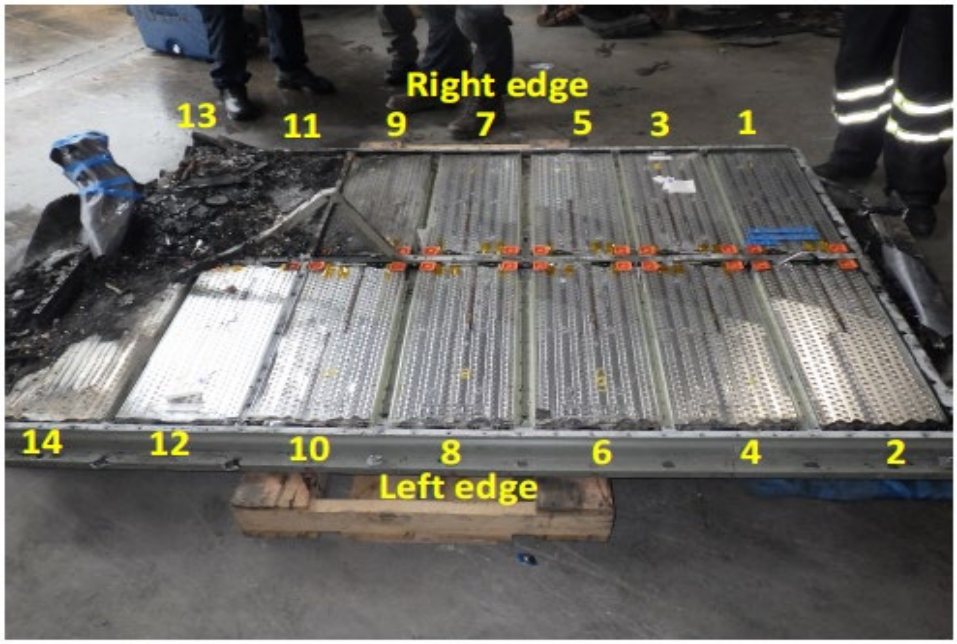
On May 8, 2018, Barrett was driving the Tesla south on state road A1A in Fort Lauderdale. He was taking two friends back to his family's house, while another friend drove separately.

This portion of A1A has two southbound lanes, two northbound lanes, and a center turning lane. The speed limit is generally thirty miles per hour. But heading into a left-hand curve, there is a twenty-five mile per hour advisory speed limit. A bright yellow flashing sign warns drivers that the curve requires a slower speed.

Despite the warning, Barrett tried to pass his other friend's car while they both were reaching the curve in the left southbound lane. Barrett accelerated and veered into the center lane. Going into the curve, his Tesla was driving 116 miles per hour. This is when he lost control and swerved into the right lane. Still traveling at around ninety miles per hour, the Tesla struck and mounted the curb, hit a concrete wall on the passenger side door, ricocheted off another concrete wall, spun around completely, and went back into A1A. Barrett's Tesla cut across the five traffic lanes, mounted the curb on the other side of the northbound lane, and then hit a metal light pole, splitting the pole in half.

After one of the collisions, the Tesla caught fire. By the time it rested, the fire engulfed the front end of the car. Barrett and his friend in the front seat died in the crash. The medical examiner concluded that Barrett died from "thermal injuries" caused by the fire, while his passenger could have died from either the fire or multiple impacts to his head.

The fire was caused by the impacts crushing the lithium-ion batteries in the Tesla's battery pack. The battery pack was attached beneath the car's front-end. It had over 7,000 cylindrical lithium-ion batteries, which were divided into sixteen modules containing 444 batteries each. The batteries in the modules nearest to the passenger side were crushed in the collision and caught fire. The resulting fire was "like a thousand blowtorches together."



PROCEDURAL HISTORY

James sued Tesla on behalf of Barrett's estate. He brought a negligence claim based on the mechanics removing the speed limiter. And he brought products liability claims (strict liability and negligence) based on two alleged defects. Specifically, he alleged that Barrett's Tesla was defective because the batteries' cell walls were not thick enough to stop from catching fire if there was a crash and the battery pack lacked fire retardant intumescent material to stop a fire from spreading.

Dr. White's Expert Opinions

James hired a battery expert, Dr. Ralph White, to testify about the alleged defects. As to the cell wall thickness defect, Dr. White issued a report concluding that the batteries' cell walls

were not thick enough to stop from catching fire if there was a crash. To reach this opinion, Dr. White reviewed online materials of the lithium-ion batteries he believed were in Barrett's Tesla. But he analyzed the wrong battery; the online materials he reviewed discussed a different battery from the one used in the 2014 Tesla Model S. While he attended a visual inspection of the damaged battery pack from Barrett's Tesla, Dr. White did not perform any tests on those batteries, and he did not measure the cell walls despite taking several batteries back with him.

After realizing his mistake in his report, Dr. White testified at his deposition that it was still possible that the cell walls of the batteries in Barret's Tesla were not thick enough to stop from catching fire in a crash if the thickness fell below 0.2mm. He did not explain how he landed on the 0.2mm standard because he did not "know if there's been sufficient tests to determine how thick the cell wall would have to be to prevent side wall rupturing." Further, Dr. White did not consider the accident details in his analysis, so he could not say whether thicker batteries would have been able to withstand the high-speed, multi-impact crash.

As to the lack of intumescent material defect, Dr. White concluded that fire retardant intumescent material could have prevented the fire from spreading within the battery pack. To reach this opinion, he explained that, prior to 2014, Tesla patented intumescent material "that expands when heated to seal around items consumed by fire." During his visual inspection, he noticed that the patented material was not in the battery pack in Barrett's Tesla.

Based on his visual inspection of the damage, Dr. White testified that the fire was caused by crushed batteries catching fire and igniting adjacent undamaged batteries. In his opinion, the intumescent material could have prevented the fire from spreading because when the crushed batteries caught fire the material would have expanded and protected the undamaged batteries from also catching fire.

Tesla's Motions to Exclude Dr. White's Expert Opinions and for Summary Judgment

Tesla moved to exclude Dr. White's expert opinions under Federal Rule of Evidence 702. As to Dr. White's cell wall thickness opinion, Tesla gave four reasons for excluding it. First, Dr. White's opinion would not help the jury because he analyzed the wrong battery and could not tell the jury whether a thicker battery would not have caught on fire. Second, his opinion was not based on sufficient data since he failed to measure the cell walls of the batteries in Barrett's Tesla. Third, Dr. White's opinion was not based on reliable methods given that he relied on a visual inspection of the batteries and could not explain how he arrived at the 0.2mm standard for cell wall thickness. And fourth, his opinion did not reflect a reliable application of scientific methods to the facts because the batteries in Barrett's Tesla actually met Dr. White's 0.2mm standard. As to Dr. White's intumescent material opinion, Tesla argued that the opinion should be excluded because it was too speculative to be reliable.

James responded and attached a supplemental affidavit from Dr. White with three parts. First, Dr. White averred that the cell walls in Barrett's Tesla may not have been thick enough because the schematics for the 2014 Tesla Model S's batteries had a "specification of 0.19 +/- 0.04mm," meaning their cell wall thickness could have been as low as 0.15mm. Second, he swore that his cell wall thickness and intumescent material opinions were reached by using a "differential diagnosis" where he ruled out other potential causes for the fire spreading from crushed to undamaged batteries. Third, Dr. White wrote that he held his opinions "within a reasonable degree of engineering certainty," even though his report and deposition testimony used uncertain terms like "maybe" and "possible."

Tesla moved to strike the supplemental affidavit because it offered untimely new opinions. At the same time, the company moved for summary judgment on James's claims. Tesla argued that the negligence claim based on the speed limiter failed because there was no summary judgment evidence that the speed limiter would have prevented the crash. And Tesla asserted that the products liability claims failed because there was no reliable expert testimony of the alleged defects, as required by Florida law, given the flaws in Dr. White's expert opinions. Even if Dr. White's expert opinions were not excluded, Tesla maintained that the products liability claims still failed because there was no evidence that the alleged defects caused Barrett's death.

The District Court's Order

The district court addressed Tesla's three pending motions—the motion to exclude Dr. White's expert opinions, the motion to strike his supplemental affidavit, and the motion for summary judgment—in one order. As to the motion to strike, the district court found that Dr. White's expert opinions in his supplemental affidavit were new and not timely because the discovery deadline had already passed. So it struck the supplemental affidavit.

As to the motion to exclude Dr. White's expert opinions, the district court explained that Dr. White's cell wall thickness opinion was flawed for the reasons Tesla explained in its motion. Dr. White's cell wall thickness opinion was based on the wrong battery; his opinion did not consider the details of the accident; he did not use a reliable standard for cell wall thickness; and the only measurement done on the actual batteries in Barrett's Tesla met the unreliable standard Dr. White provided. But the district court concluded Dr. White's intumescent material opinion was sufficiently reliable because he visually inspected the battery pack, identified that the intumescent material was absent, and was qualified to opine that the intumescent material could have prevented the fire from spreading. So the district court granted Tesla's motion in part—excluding Dr. White's cell wall thickness opinion but not the intumescent material opinion.

Finally, as to Tesla's summary judgment motion, the district court denied summary judgment on the negligence claim based on

the speed limiter. It granted summary judgment for Tesla on the products liability claims based on the cell wall thickness defect because Dr. White was James's only expert testifying that the cell walls were defective and his testimony was excluded. But the district court denied summary judgment on the products liability claims based on the lack of intumescent material because Dr. White's opinion, which had not been excluded, created a genuine dispute of fact on that claim.

The Reconsideration Motion and Order

Tesla moved for reconsideration of the denial of its summary judgment motion on the products liability claims based on the lack of intumescent material. The company argued that even with Dr. White's expert opinion, there was no evidence that the lack of intumescent material caused Barrett's death. Specifically, Tesla asserted that the causation element was not met because Dr. White did not testify that Barrett would have survived the fire "but for" the lack of intumescent material in his Tesla's battery pack.

The district court agreed that it failed to consider the causation element in its initial order and granted reconsideration. Having reconsidered, the district court explained that Dr. White's intumescent material opinion established only that the lack of intumescent material caused the fire to spread. But his opinion was not sufficient to show that Barrett would have survived the fire but for the lack of intumescent material. Without that critical causation evidence, the district court granted summary judgment for Tesla

on James's products liability claims based on the lack of intumescent material.

The Trial and Judgment

The case went to trial on James's negligence claim based on the speed limiter. The jury found in James's favor and awarded James $10,500,000 in compensatory damages. But, under Florida's comparative fault scheme, *see* FLA. STAT. § 768.81(3) (2022), the jury apportioned ninety percent fault to Barrett, nine percent fault to James, and one percent fault to Tesla. That left James with a final judgment awarding him $105,000 in damages.

James appeals the district court's orders striking Dr. White's supplemental affidavit, excluding Dr. White's cell wall thickness opinion, and granting summary judgment for Tesla on James's products liability claims.

STANDARD OF REVIEW

We review a decision to strike an expert's supplemental affidavit for an abuse of discretion. *See Benson v. Tocco, Inc.*, 113 F.3d 1203, 1208 (11th Cir. 1997). And we also review a decision to exclude an expert's testimony under Federal Rule of Evidence 702 for an abuse of discretion. *Sorrels v. NCL (Bahamas) Ltd.*, 796 F.3d 1275, 1281 (11th Cir. 2015). But we review a grant of summary judgment de novo. *Beal v. Paramount Pictures Corp.*, 20 F.3d 454, 459 (11th Cir. 1994). Summary judgment is appropriate only if "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." FED. R. CIV. P. 56(a).

DISCUSSION

James argues the district court erred by striking Dr. White's supplemental affidavit, excluding Dr. White's cell wall thickness opinion, and granting summary judgment for Tesla on James's products liability claims. We will address each argument in turn.

The District Court Did Not Abuse Its Discretion in Striking Dr. White's Supplemental Affidavit.

James argues that the district court abused its discretion in striking Dr. White's supplemental affidavit. Because his supplemental affidavit did not offer new opinions, he contends, there was no basis for the district court to find that it was untimely. We disagree.

Under Federal Rule of Civil Procedure 26(a)(2)(D), "[a] party must" disclose expert testimony "at the times and in the sequence that the court orders." FED. R. CIV. P. 26(a)(2)(D). "In order to make a proper disclosure, parties must, by the deadline, disclose the identity of their experts 'accompanied by a written report.'" *Guevara v. NCL (Bahamas) Ltd.*, 920 F.3d 710, 717 (11th Cir. 2019) (quoting FED. R. CIV. P. 26(a)(2)(B)). The report "must contain . . . a complete statement of all opinions the witness will express and the basis and reasons for them" along with "the facts or data considered by the witness in forming them." FED. R. CIV. P. 26(a)(2)(B)(i)–(ii). If an expert wishes to materially change his or her opinions, then the party must file a supplemental disclosure. *Id.* R. 26(e)(2). If a party violates rule 26 by failing to timely disclose or supplement an expert opinion, rule 37(c) instructs that

"the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless." *Id.* R. 37(c)(1).

We recently applied the expert disclosure rules to a supplemental affidavit in *Guevara*. *See* 920 F.3d at 719–20. There, a party filed an expert's affidavit after the close of expert discovery and styled it as "supplemental" to the expert's existing opinions. *See id.* at 715–16. The supplemental affidavit added material in response to criticisms from the opposing party's experts. *See id.* at 719. We explained that "[c]ourts have broad discretion to exclude untimely expert testimony." *Id.* at 718 (citation omitted). We also made clear that "a party cannot abuse [the r]ule[s]" governing supplementing expert reports by submitting a supplemental affidavit "to merely bolster a defective or problematic expert . . . report." *Id.* at 719 (citation and internal quotation marks omitted). Because the supplemental affidavit in *Guevara* was untimely and bolstered the expert's defective initial report, we concluded that the district court did not abuse its discretion in striking it. *See id.*

Dr. White's supplemental affidavit has the same problems as the expert's supplemental affidavit in *Guevara*. It was untimely because it was filed a month after the expert discovery deadline. *See id.* at 718–19. And James failed to explain how the late-filed supplemental affidavit "was substantially justified or . . . harmless." *See* FED. R. CIV. P. 37(c)(1).

Dr. White's supplemental affidavit also "abuse[d] [the r]ule[s]" governing supplementing expert reports because his

affidavit sought "to merely bolster [his] defective . . . report." *See Guevara*, 920 F.3d at 719; *see also* FED. R. CIV. P. 26(e). First, in its motion to exclude Dr. White's expert opinions, Tesla asserted that Dr. White could not provide a reliable methodology to conclude that the cell wall thickness defect caused the fire to spread. In response, Dr. White's supplemental affidavit bolstered his cell wall thickness opinion by explaining, for the first time, that he reached the conclusion that he did by using a differential diagnosis. Second, in its motion to exclude Dr. White's expert opinions, Tesla faulted Dr. White for using "speculat[ive]" language throughout his expert report and testimony. In response, Dr. White's supplemental affidavit bolstered his opinions by explaining that the district court should ignore the speculative language because he held his opinions to "a reasonable degree of engineering certainty."

The opinions in Dr. White's supplemental affidavit were new and sought to bolster the defects and problems identified by Tesla. As in *Guevara*, it was not an abuse of discretion to strike Dr. White's untimely supplemental affidavit that bolstered his defective expert report. *See* 920 F.3d at 719–20.

James pushes back on that conclusion, relying on out-of-circuit district court orders allowing untimely supplemental affidavits that clarified timely expert opinions. Other than the fact that they are not binding, these out-of-circuit district court orders are unhelpful to James for two reasons. First, the supplemental affidavits in those cases clarified the experts' initial reports. Here, however, Dr. White's supplemental affidavit gave new opinions in response

to different defects and problems identified by Tesla in its motion to exclude. For the first time, Dr. White stated that he used a differential diagnosis to reach his opinions. And for the first time, Dr. White expressed "a reasonable degree of engineering certainty," rather than a possibility. These new opinions did not clarify his initial report. Instead, as we held in *Guevara*, this was improper "bolster[ing,]" and the district court did not abuse its discretion in striking the new untimely opinions. *See id*.

Second, James makes a common mistake in arguing that one district court's decision must be an abuse of discretion because it is contrary to another district court's decision. The "highly deferential" abuse of discretion standard allows for "a range of [permissible] choice[s]" by a district court. *Aldana v. Del Monte Fresh Produce N.A., Inc.*, 578 F.3d 1283, 1288 (11th Cir. 2009) (quotations omitted). Simply because one district court allows a party to do one thing does not mean the opposite is an abuse of discretion. *See United States v. Shamsid-Deen*, 61 F.4th 935, 944 (11th Cir. 2023) ("[I]f we reviewed legal issues only for an abuse of discretion and two district courts . . . decided an identical legal issue in opposite ways, we could affirm both of them . . . ."). Both decisions may be within the discretion of the district court. *Id*. Here, for example, we held in *Guevara* that it was not an abuse of discretion to strike an untimely supplemental affidavit that bolstered the expert's defective initial report. *See* 920 F.3d at 719–20. That other district courts in other circuits have reached a different conclusion does not mean that striking Dr. White's supplemental affidavit here was an abuse

of discretion. *See Shamsid-Deen*, 61 F.4th at 944. Under *Guevara*, it was not.

The District Court Did Not Abuse Its Discretion in Excluding Dr. White's Cell Wall Thickness Opinion.

Next, James contends that the district court abused its discretion in excluding Dr. White's cell wall thickness opinion under rule 702. That abuse of discretion, James argues, led to the erroneous grant of summary judgment for Tesla on James's products liability claims based on the cell wall thickness defect.

Rule 702 first requires the party seeking to admit expert testimony to show that the expert has sufficient "knowledge, skill, experience, training, or education" to give an opinion on the matter. FED. R. EVID. 702. Beyond the expert's qualifications, the party must also show that: (1) "the expert's scientific . . . knowledge will help the trier of fact to understand the evidence or to determine a fact in issue"; (2) "the testimony is based on sufficient facts or data"; (3) "the testimony is the product of reliable principles and methods"; and (4) "the expert's opinion reflects a reliable application of the principles and methods to the facts of the case." *Id*.

In applying rule 702, the district court acts as a "gatekeeper[]," ensuring that deficient expert testimony is excluded from trial. *Hughes v. Kia Motors Corp.*, 766 F.3d 1317, 1328 (11th Cir. 2014) (citing *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579 (1993)). Because rule 702 "uniquely entrust[s]" this gatekeeping role "to the district court," it has "broad discretion with wide latitude in" determining whether an expert's testimony fails to meet

the rule 702 requirements. *See Kilpatrick v. Breg, Inc.*, 613 F.3d 1329, 1335, 1343 (11th Cir. 2010) (citation and internal quotation marks omitted). Thus, we will only reverse a district court's order excluding expert testimony if we are convinced the district court's rule 702 analysis was "manifestly erroneous." *Id.* at 1335 (citation and internal quotation marks omitted).

Here, the district court did not abuse its discretion in applying the rule 702 requirements to Dr. White's cell wall thickness opinion. Going in order as it appears in the rule, Dr. White's cell wall thickness opinion would not "help the trier of fact" because he analyzed the wrong battery. *See* FED. R. EVID. 702. In reaching his opinion, Dr. White reviewed online materials for a battery that was not in Barrett's Tesla. Further, his cell wall thickness opinion would not have helped the jury to understand the evidence because Dr. White never considered the details of the accident. Thus, he could not tell the jury whether a thicker battery could have withstood the high-speed, multi-impact collision.

Next, Dr. White's cell wall thickness opinion was not based on sufficient "facts or data." *See id.* By his own admission, he did not measure the batteries in Barrett's Tesla, even though he had access to them.

Also, Dr. White did not use "reliable principles and methods" in reaching his cell wall thickness opinion. *See id.* When asked, he could not provide a generally accepted standard. And when pressed, he threw out 0.2mm as thick enough to stop from catching fire if there was a crash, but he did not want to give "a

specific number" because he did not "know if there's been sufficient tests to determine how thick the cell wall" should be.

Finally, Dr. White did not provide a "reliable application" of the thickness standard because the only test done on a battery in Barrett's Tesla showed that the cell walls were 0.21mm, which exceeded the standard. *See id.* Because Dr. White's cell wall thickness opinion would not be helpful to the jury, was not based on sufficient facts or data, was not based on reliable principles, and did not reliably apply any principles, the district court was within its "broad discretion" in excluding Dr. White's cell wall thickness opinion. *See Kilpatrick*, 613 F.3d at 1343 (affirming a district court's decision to exclude an expert's testimony because the expert failed to use a reliable methodology to show that the defendant's product caused the plaintiff's injury); *see also Hughes*, 766 F.3d at 1330–31 (affirming a district court's decision to exclude an expert's testimony because the expert failed to use a reliable methodology in opining that a car's defect caused the plaintiff's death and because the expert failed to consider the details of the multi-impact car accident in reaching his opinion).

James disagrees for two reasons. First, James argues that Dr. White's cell wall thickness opinion was sufficiently reliable because he could tell from a visual inspection that the cell walls were not thick enough. But the evidence showed that cell wall thickness is measured in microns—a fraction of a millimeter—which could not be detected by the naked eye. Tesla's expert, for example, had to use a computed tomography scan just to get an accurate

measurement of the cell wall thickness. Dr. White, on the other hand, had trouble identifying the right battery from a visual inspection.

Second, James contends the mistake of analyzing the wrong battery was limited to Dr. White's initial review of the evidence and that he came to the same conclusion once he reviewed the correct battery's schematics. In support, James cites Dr. White's deposition testimony that the batteries in Barrett's Tesla may not be thick enough because their variable size—0.19 +/- 0.04mm—could fall below Dr. White's thickness standard.

The problem for James is that, even if Dr. White fixed his cell wall thickness opinion in his deposition testimony, his opinion still did not meet the rule 702 requirements. Even with the fix, Dr. White did not account for the details of the accident. *See* FED. R. EVID. 702; *see also Hughes*, 766 F.3d at 1331 (explaining that an expert's opinion was flawed because the expert failed to account for "how the various impacts . . . affected" his conclusion that a car's defect caused the plaintiff's death in a multi-impact car accident). He did not measure the batteries in Barrett's Tesla. *See* FED. R. EVID. 702. He could not explain how he reached his measurement standard. *See id*. And the only measurement done on the batteries in Barrett's Tesla exceeded the standard he provided. *See id*.

Without Dr. White's cell wall thickness opinion, James had no summary judgment evidence that the cell walls of the batteries in Barrett's Tesla were defective. Because evidence of a defect or

unreasonably dangerous condition is required for products liability claims under Florida law, the district court did not err in granting summary judgment for Tesla on James's products liability claims based on the cell wall thickness defect. *See R.J. Reynolds Tobacco Co. v. Nelson*, 353 So. 3d 87, 89–90 (Fla. Dist. Ct. App. 2022) (explaining that a defect or unreasonably dangerous condition is a required element for both strict products liability and negligent design claims).

The District Court Did Not Err in Granting Summary Judgment for Tesla on the Products Liability Claims Based on the Lack of Intumescent Material.

Finally, James argues the district court erred in granting summary judgment for Tesla on his products liability claims based on the lack of intumescent material in the battery pack. Dr. White's opinion, James asserts, created a genuine issue of fact that the lack of intumescent material caused Barrett's death.

Under Florida law, causation is a required element of strict products liability and negligent design claims. *See Nelson*, 353 So. 3d at 89–90. To meet this requirement, the plaintiff must show that the defendant's tortious act caused the injury. *Tieder v. Little*, 502 So. 2d 923, 925 (Fla. Dist. Ct. App. 1987). Florida courts generally use the "but for" test for factual causation. *Stahl v. Metro. Dade Cnty.*, 438 So. 2d 14, 17 (Fla. Dist. Ct. App. 1983) (citation and internal quotation marks omitted). That test requires the plaintiff to show that it is "more likely than not" that the plaintiff's injury would not have occurred but for the defendant's tortious act. *See Gooding v. Univ. Hosp. Bldg., Inc.*, 445 So. 2d 1015, 1020 (Fla. 1984).

James did not present summary judgment evidence meeting the Florida causation standard. James relied on Dr. White's testimony to prove causation. Dr. White testified that the intumescent material could have prevented the fire from spreading to undamaged batteries within the battery pack. But Barrett died from the fire that started when the batteries in his Tesla were crushed during the high-speed collision. The problem for James is that Dr. White never testified that Barrett would have survived the fire that started from the crash even if the intumescent material was in the car. In causation terms, there was insufficient evidence for a reasonable jury to conclude that it was "more likely than not" that Barrett would not have died in the fire but for the lack of intumescent material in his Tesla's battery pack. *See id*. Without that causation evidence, the district court did not err in granting summary judgment for Tesla on James's products liability claims based on the lack of intumescent material.

Recognizing this gap, James maintains that we should apply a more relaxed "substantial factor" test for factual causation, rather than the more stringent but-for test. Under the "substantial factor" test, the factual causation element is met if the defendant's negligence "was a material and substantial factor in" causing the plaintiff's injury. *Stahl*, 438 So. 2d at 19 (emphasis omitted) (quoting *Loftin v. Wilson*, 67 So. 2d 185, 191 (Fla. 1953)). This more relaxed substantial factor test was met, James argues, because the fire spreading to undamaged batteries was a substantial factor in the severity of the fire, and the fire would not have spread if the intumescent material had been in the battery pack.

But the substantial factor test does not apply here. Florida courts apply the substantial factor test only where there are concurring causes of an injury. *See Stahl*, 438 So. 2d at 18. Concurring causes are independent causes that "alone could have produced . . . the plaintiff's injury." *Id.*; *see also Goldschmidt v. Holman*, 571 So. 2d 422, 424 (Fla. 1990) ("Concurring causes are two separate and distinct causes that operate contemporaneously to produce a single injury."). As explained by the Florida courts, examples of concurring causes include when there is a two-impact car accident and either impact would have independently caused the plaintiff's death, *see Salazar v. Santos (Harry) & Co.*, 537 So. 2d 1048, 1050 (Fla. Dist. Ct. App. 1989), or when the plaintiff dies from two independently lethal gunshot wounds, *Sanders v. Am. Body Armor & Equip.*, 652 So. 2d 883, 885 (Fla. Dist. Ct. App. 1995). A different, more relaxed causation test is necessary in these rare cases because the concurring causes would not meet the "but for" test given that the injury would still occur in the absence of either concurring cause. *See Stahl*, 438 So. 2d at 18.

Outside of these rare cases, Florida courts apply the "but for" test, even when there are multiple dependent causes that combine to create a plaintiff's injury. *See id.* In *Stahl*, for example, which James describes as his "best" case, a boy was killed when he had to take an alternate bike route due to a defective sidewalk and was then hit by a car after he veered into the road. 438 So. 2d at 16. There, the court applied the but-for test because the causes depended on each other and could not have independently killed the boy. *Id.* at 22. In other words, the only way the car was able to hit

the boy was because the sidewalk was not maintained and the boy took the alternate route and veered into the road. *Id*. Those two causes combined to cause the injury, yet they were not independently sufficient, so the substantial factor test did not apply. *Id*.; *see also Tieder*, 502 So. 2d at 925, 927 (applying the "but for" test when a car drove a pedestrian into a defective brick wall that tumbled when hit because the multiple causes of the plaintiff's death were dependent on one another, rather than independently sufficient); *Starling v. City of Gainesville*, 106 So. 425, 426 (Fla. 1925) ("[W]here two causes combine to produce an injury, both in their nature proximate, the one being a defect in a city street and the other some accident for which neither party is responsible, the city is liable provided . . . the injury would not have been sustained *but for* the defect in the street." (emphasis added)).

Like the defective sidewalk in *Stahl*, the lack of intumescent material is a dependent, and not a concurring, cause. Just as the defective sidewalk in *Stahl* could not have killed the boy by itself, the lack of intumescent material could not have killed Barrett by itself. Intumescent material is a fire retardant. It does not spark fires; it stops them from spreading once they begin. If the lack of intumescent material acted alone, there would not have been a fire at all. So, to the extent the lack of intumescent material played a causal role in Barrett's death, it was dependent on the crushed batteries in Barrett's Tesla sparking the fire to begin with. Because the lack of intumescent material is a dependent cause, rather than a concurring one under Florida law, the but-for test applies. And James's products liability claims based on the lack of intumescent

material fail under this test because, even with Dr. White's opinion, there was no evidence for a reasonable jury to conclude that Barrett would have survived but for the lack of intumescent material in his Tesla's battery pack.

CONCLUSION

In sum, the district court did not abuse its discretion in striking Dr. White's untimely supplemental affidavit that bolstered his defective expert report. The district court did not abuse its discretion in excluding Dr. White's cell wall thickness opinion because it did not meet the rule 702 requirements. Without that opinion, the district court properly granted summary judgment for Tesla on James's products liability claims based on the cell wall thickness defect because there was no summary judgment evidence that the cell wall thickness was defective. And the district court properly granted summary judgment for Tesla on James's products liability claims based on the lack of intumescent material because there was insufficient causation evidence.

AFFIRMED.