

**In the First District Court of Appeal
State of Florida**

CHARLES ADELSON

Appellant

vs.

STATE OF FLORIDA

Appellee

Case No. 1D2024-0004

LT No.: 37-2016-CF-3036

Appealed from the Second Judicial Circuit of Florida
in and for Leon County

APPELLEE'S ANSWER BRIEF

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STATEMENT OF THE CASE & FACTS

A jury convicted Adelson for causing the murder of Daniel Markel. (R. at 2080.) In 2021, this Court affirmed the murder conviction of Sigfredo Garcia, the hitman Adelson paid to kill Markel. *See Garcia v. State*, 327 So. 3d 947 (Fla. 1st DCA 2021). This Court also recently affirmed the conviction of Katherine Magbanua, Adelson's ex-girlfriend who served as an intermediary between Adelson and Garcia. *Magbanua v. State*, 50 Fla. L. Weekly D1433a (Fla. 1st DCA July 2, 2025).

I. MOTION TO CHANGE VENUE

In his first issue on appeal, Charles Adelson argues that the trial court should have granted his oral motion for a change of venue. Adelson's first issue presents this Court with three questions:

1. Did Adelson's oral motion for change of venue comply with the requirements of Florida Rule of Criminal Procedure 3.240?
2. Did Adelson waive his change-of-venue argument by accepting his jury without objection?
3. Did the pretrial publicity surrounding the Markel murder make it impossible for a Leon County jury to try Adelson's case solely on the evidence presented in the courtroom?

Florida Rule of Criminal Procedure 3.240 required Adelson to file a written motion along with at least two supporting affidavits and a certificate of good faith. Instead of filing a written motion for change of venue, Adelson made an oral motion in the middle of jury selection. Adelson filed no affidavits to support his motion. Adelson also failed to file a certificate of good faith. (R. at 2851–2.)

Before jury selection began in October of 2023, the trial court screened the prospective jurors to determine their exposure to publicity concerning Markel’s murder and Adelson’s prosecution. The court allowed Adelson to question all the prospective jurors. The court also allowed Adelson to make objections to any prospective jurors that Adelson believed were unfit to serve on the jury panel. (R. at 2234–2851).

The trial court pre-screened about 130 prospective jurors. Most of these prospective jurors had heard of the Markel murder but had not prejudged the case. Only 22 prospective jurors said that they could not be fair and impartial.¹ At least 30 people had

¹ R. at 2288; 2290; 2343; 2393–4; 2397–8; 2513; 2530–1; 2593; 2623–6; 2630–1; 2631–2; 2637–8; 2644–5; 2701; 2714–6; 2757; 2802; 2807–8; 2830–2; 2839–40; 2846–7; 2848.

not even heard of Markel’s murder—or Adelson—until the day of jury selection.²

According to Adelson’s initial brief, “53 [prospective jurors] believed Adelson was guilty.” To support this claim, Adelson points to the comments of 29 prospective jurors who were familiar with Markel’s murder. (Initial Br. at 29–41.)³ But at least 12 of these prospective jurors said they could set aside their preconceptions about the case and base their verdict on the evidence presented at trial.⁴ For example, one prospective juror quoted in Adelson’s brief said Markel’s murder was a “tragedy.” But this prospective juror understood that he should not prejudge Adelson’s case, saying that “every man’s innocent until proven guilty.” (R. at 2501.)

² R. at 2285; 2385–6; 2390; 2398–9; 2404; 2407–9; 2424–5; 2425–7; 2428–9; 2430–1; 2474–6; 2496; 2499–2505 2524–5; 2526–7; 2560–1; 2610–2; 2618–9; 2620–1; 2633–4; 2697–8; 2706–7; 2708–9; 2717–9; 2722–3; 2751–2; 2753–5; 2758–60; 2835–7; 2840–1; 2849–50.

³ This answer brief will cite the initial brief by the PDF page number.

⁴ R. at 2391–4; 2400–2500; 2484; 2501; 2520–23; 2732–7; 2477–82; 2493–6; 2541–8; 2257–60; 2552–7; 2675.

At the end of the pre-screening process, Adelson and the State agreed upon 58 prospective jurors for the final jury panel.⁵ But then Mr. Dubin—an attorney serving as Adelson’s jury consultant—made an oral motion for change of venue. Dubin claimed it was “impossible for Mr. Adelson to get a fair trial in the city of Tallahassee” because some prospective jurors may have hidden their bias against Adelson. (R. at 2851–2.) When the court asked where Adelson’s trial should occur, Dubin failed to give a definite answer. (R. at 2852.)⁶

The trial court denied Adelson’s motion for a change of venue. The court noted that a significant number of jurors “had no exposure to this case whatsoever.” The court also found that many other prospective jurors that were familiar with the case “indicated that they will follow the law and they will render a verdict that's based solely on the evidence.” (R. at 2853.)

⁵ R. at 2452–3; 2646; 2851; 2853.

⁶ “My suggested venue would be somewhere in south Florida, somewhere in the middle of the state, somewhere where the Tallahassee Democrat doesn't have the circulation that it has and WCTV is not the local TV station. I'll leave that in the court's discretion.” (R. at 2852)

Adelson and the prosecution were able to select 12 jurors from the 58 prospective jurors that passed the initial screening process. The trial court announced the jurors' names and asked Adelson, "do you accept the jurors that I have just read aloud as your jury in this matter?" Adelson replied, "Yes, your honor." (R. at 3263–4.) The parties then selected three alternate jurors. Once more the trial court announced the alternate jurors' names, then asked Adelson if he accepted them. Adelson replied, "Yes, yes Your Honor." (R. at 3265.) The trial court then swore in Adelson's jury without objection from Adelson. (R. at 3267.) Adelson also never objected to his jury once his trial began.

II. MOTION TO STRIKE JURY POOL

Adelson argues in his second issue that the trial court should have granted his motion to strike the entire jury pool. Adelson's second argument presents this Court with three questions:

1. Did Adelson comply with Florida Rule of Criminal Procedure 3.290, which says that "a challenge to the [jury] panel shall be in writing and shall specify the facts constituting the ground of the challenge"?
2. Did Adelson waive his argument by affirmatively accepting his jury without renewing his objection before the jury was sworn?

3. Did any of the prospective jurors make statements in front of the jury pool regarding facts that would not otherwise be presented to the jury?

Mr. Dubin made his first oral motion to strike the entire jury pool on the first day of jury selection. To support this motion, Dubin cited two prospective jurors who made comments about Adelson's case before jury selection began. (R. at 2539.) The first prospective juror said Adelson's case was a "federal case" that "had something to do with the murder of the professor." This prospective juror was excused before Adelson moved to strike the jury pool. (R. at 2534–5.)

Dubin also cited another prospective juror—a young man—who griped, "we're f***ed, because we're going to be here all day." This young man further exclaimed that Adelson was guilty. According to the prospective juror that reported the young man's behavior, nobody in the jury pool interacted with the young man because he was "not very approachable." The trial court told Adelson he could interview the young man on the following day (R. at 2540), but the young man failed to report for the second day of jury selection. The trial court asked Adelson if he wished to compel the young man's appearance, but Adelson declined this offer. (R. at 2854–5.)

Adelson's lawyer renewed his motion to strike the entire jury pool when he learned that a third prospective juror had said that Daniel Markel's murder was "nine years ago." However, the prospective juror who reported this comment said that none of the jury pool members expressed an opinion about Adelson's case. (R. at 2545–9.)

A fourth prospective juror said, "I think he did it" to another member of the jury pool. (R. at 2586.) Upon hearing this, Adelson's trial attorney, Mr. Rashbaum, said, "[t]hey're all tainted. From [prospective juror] 51 to 102. . . . Judge, we have to get rid of Jurors 51 and [sic] 102." (R. at 2587–8.) Interpreting Adelson's complaint as some type of motion, the trial court denied relief. But the trial court did offer Adelson's attorneys the opportunity to listen to audio recordings from the room where the jury pool was assembled. (R. at 2588–9.)

The trial court swore in the jury without any objection from Adelson. (R. at 3263–4.) Adelson also failed to object to the jury after his trial began.

III. TEXT MESSAGES EVINCING “NORMAL COMMUNICATION”

In his third argument, Adelson contends that the trial court should have allowed him to enter a 50-page exhibit containing more than 400 text messages. According to Adelson, these messages showed that he communicated “normally” with co-conspirators Katherine Magbanua, Donna Adelson, and Wendi Adelson immediately before Markel’s murder. This argument presents this Court with three questions:

1. Did Adelson invite the error he alleges in his brief?
2. Was it relevant that Adelson did not communicate about Markel’s murder over text?
3. Was the exclusion of the text messages harmless because Adelson testified that none of his texts discussed Markel’s murder?

The 400-plus text messages Adelson proffered were sent between June 2, 2014, to June 7, 2014. (R. at 2015–65.) It was during this time that Sigfredo Garcia—along with his friend Luis Rivera—made their first, unsuccessful attempt to murder Markel. According to Adelson’s attorney, Adelson’s text messages were relevant to show Adelson’s “state of mind,” and that Adelson was focused on “everyday activit[ies]” during the first week of

June 2014. (Trial Tr. at 1586–7.)⁷ Adelson’s lawyer also thought that Adelson’s text messages could explain away the heavy phone call traffic between Adelson and his co-conspirators during the first week of June 2014. (Trial Tr. at 1594.)

The trial court did not believe that all the calls in Adelson’s composite were relevant. The trial court also cautioned Adelson’s lawyer that the text messages he sought to introduce contained racist remarks and sexually explicit content. (Trial Tr. at 1586.) The record supports the trial court’s concern.⁸ Adelson offered to redact this offensive material but persisted in his attempt to enter all 50 pages of text messages into the record. The trial court declined this proposal. Instead, the court ruled that Adelson could introduce individual text messages if they were relevant and did not contain hearsay. (Trial Tr. at 1586–95.)

Adelson never tried to enter any individual, relevant text messages into evidence. Instead, Adelson testified that he had reviewed all the text messages he sent and received from June 2 to June 7 of 2014. Adelson confirmed that none of these texts

⁷ This brief will use the PDF page number when citing the trial transcript.

⁸ R. at 2016; 2018; 2021; 2023; 2033; 2055; 2062.

mentioned murder. (Trial Tr. at 1596.) Also, Adelson never prof-
fered any text messages from July of 2014—the month when
Markel was killed.

IV. ADELSON’S STATEMENT ABOUT PRIOR EXTORTION

In his fourth issue, Adelson contends that he should have
been allowed to introduce a phone call where he discussed extor-
tion with his mother, Donna. Adelson’s argument presents this
Court with three questions:

1. Was Adelson’s statement hearsay because it went to the
truth of whether Adelson had been extorted?
2. Did Adelson’s statement fall under the state-of-mind excep-
tion to the general rule prohibiting hearsay?
3. Was excluding the phone call harmless because Adelson
testified about what he said in the phone call, and the jury
heard Adelson make similar comments in other calls?

Adelson wanted the jury to believe that Sigfredo Garcia and
Katherine Magbanua killed Markel without Adelson’s knowledge,
then extorted Adelson for money. To bolster this claim, Adelson
sought to show the jury a transcribed phone conversation he had
with Donna shortly after an event known as “the bump.” During
the bump, an undercover FBI agent approached Donna on the
street and pretended to be acquainted with one of Markel’s kill-
ers. This undercover agent implied that Donna needed to pay

money to secure the killers' silence. The bump spawned a flurry of communication between Charles Adelson, Donna, Magbanua, and Garcia.

During the phone call in question, Adelson said to his mother, "I'm just telling you it it's not done like that. It's not. . . . I know for a fact it's not. It's not done like that at all." Soon after making this statement, Adelson added, "I can [*sic*] say it on the phone without saying it, but it's not done in such a nice manner." (Trial Tr. at 1782-3.)

The State objected to this phone call, arguing that Adelson's statement was hearsay. (Trial Tr. at 1772.) Adelson's lawyer countered that Adelson's statement was "an opinion based on his past" that reflected Adelson's "state of mind." The trial court sustained the State's objection. (Trial Tr. at 1786.)

But the trial court did allow Adelson to testify about this phone call. Over the State's objection, Adelson testified that he told his mother "[t]hat it's not done this way, I know for a fact, and I'm 99 percent sure . . ." (Trial Tr. at 1788.) Also, the jury heard Adelson make a nearly identical comment when the State played "Call R." In this call, Adelson told Donna, "I actually do

know how these things are done. And that was the same thing that I said, it's not done like this.” (Trial Tr. at 1284.)

V. CUMULATIVE ERROR

Adelson’s final argument is that the errors alleged in his initial brief resulted in a cumulative error that deprived him of a fair trial. This argument will fail if Adelson’s other arguments are meritless.

SUMMARY OF THE ARGUMENT

I. Because Adelson accepted his jury without renewing his objection to venue, he cannot argue on appeal that his trial should have been removed from Leon County. But a change of venue was unwarranted since most of the Leon County residents who assembled for Adelson’s jury selection had not prejudged Adelson’s case.

II. By accepting his jury and not renewing his motion to strike the entire jury pool, Adelson waived his second argument on appeal. But Adelson’s motion to strike the entire jury pool was meritless because it was based on isolated comments that could not have influenced all the prospective jurors.

III. Adelson failed to demonstrate the relevance of his exhibit containing more than 400 text messages. In any event, Adelson testified about the content of these messages. It was also better that the jury did not see the vulgar texts within Adelson’s exhibit.

IV. Adelson’s out-of-court statement about knowing how extortion “worked” was hearsay because they were offered for the truth of the matter asserted: that Adelson had experienced extortion. Adelson is also wrong that his statement fell under the state-of-mind exception to the hearsay rule. The state-of-mind exception only applies to statements about the future acts of the declarant, not the past acts of other people.

V. Adelson’s other four arguments lack merit, and Adelson does not cite any additional errors in his initial brief. Adelson’s cumulative error argument, therefore, fails.

ARGUMENT

I. A CHANGE OF VENUE WAS UNWARRANTED, AND ADELSON’S ARGUMENT IS PROCEDURALLY BARRED.

Adelson contends that the trial court should have granted his oral motion to change venue. But Adelson affirmatively accepted his jury, thereby waiving all the objections he made during jury selection. Also, the record shows that Leon County residents were perfectly capable of deciding Adelson’s case based on the evidence presented in court.

A. Adelson waived his change-of-venue argument by accepting the jury without objection.

At the completion of jury selection, the trial court asked Adelson if he accepted the jury. Adelson replied, “Yes, your honor.” (R. at 3263–5.) The trial court then swore in the jury, and Adelson never renewed his motion to change venue.

The Supreme Court of Florida said in *Armstrong v. State* that “a motion for change of venue should be renewed at the conclusion of jury selection or be considered waived.” *Armstrong v. State*, 862 So. 2d 705, 719 (Fla. 2003) (citing *Martin v. State*, 816 So. 2d 187, 188 (Fla. 5th DCA 2002) (“Jury selection issues are deemed waived after acceptance of the jury, unless the objec-

tion is renewed, or the jury is accepted subject to an earlier objection.”) *See also Hilton v. State*, 326 So. 3d 640, 652 (Fla. 2021) (holding that defendant must make a second objection before jury is sworn; “Failure to lodge the second objection indicates abandonment of the initial objection.”) Because Adelson waived all his objections to the jury, this Court should reject Adelson’s first argument without reaching the merits.

B. Adelson failed to comply with Florida Rule of Criminal Procedure 3.240.

Florida Rule of Criminal Procedure 3.240 says that “[e]very motion for change of venue shall be in writing and accompanied by: (1) affidavits of the movant and 2 or more other persons setting forth facts on which the motion is based; and (2) a certificate by the movant’s counsel that the motion is made in good faith.” Fla. R. Crim. P. 3.240(b).

Adelson made an oral motion to change venue without providing any supporting documents. (R. at 2851–2.) Adelson’s motion, therefore, was legally insufficient. *See Provenzano v. State* 497 So. 2d 1177, 1181 (Fla. 1986) (holding that because defendant failed to file a written motion, his change-of-venue ar-

gument was unpreserved)⁹; *see also Holsworth v. State* 522 So. 2d 348, 350 n.1 (Fla. 1988) (implying that defendant’s motion to change venue was legally insufficient because it failed to comply with Rule 3.240).¹⁰

Adelson also failed to file a certificate of good faith as required by Rule 3.240. The Supreme Court of Florida demands strict compliance when a motion requires a certificate of good faith. *See Barnhill v. State*, 834 So. 2d 836, 843 (Fla. 2002) (holding that trial court properly denied motion to disqualify judge because counsel’s certificate of good faith was insufficient).

This Court should affirm the trial court’s ruling because Adelson’s motion was legally insufficient, even though the trial court denied Adelson’s motion on other grounds. *See Cohen v.*

⁹ “Appellant contends that the trial court erred in failing to grant his request for change of venue. However, this issue has not been preserved for appellate review . . . because the motion to change venue was neither written, as required by Florida Rule of Criminal Procedure 3.240 and requested by the judge, nor ruled upon by the trial court.” *Provenzano*, 497 So. 2d at 1181–82.

¹⁰ “As a threshold matter, we note that appellant offers no record evidence of compliance with Florida Rule of Criminal Procedure 3.240(b)(1) . . . However, assuming *arguendo* that appellant’s oral motion was procedurally sufficient, we review this claim on its merits.” *Holsworth*, 522 So. 2d at 350 n.1

Mohawk, Inc., 137 So. 2d 222, 225 (Fla. 1962) (“[I]f upon the pleadings and evidence before the trial court, there was any theory or principle of law which would support the trial court's judgment . . . the district court [is] obliged to affirm that judgment.”).

C. If this Court reaches the merits of Adelson’s motion to change venue, the standard of review is fundamental error.

In his initial brief, Adelson argues that the standard of review is abuse of discretion. This is wrong. Adelson failed to preserve his objection to venue because he never filed a legally sufficient motion, and he never renewed his objection before the trial began. If this Court considers Adelson’s unpreserved argument on the merits, then Adelson has the burden to demonstrate fundamental error. *See Smith v. State*, 320 So. 3d 20, 27 (Fla. 2021) (applying fundamental error standard of review where defendant failed to preserve his motion for change of venue); *see also* § 924.051(3), Fla. Stat. (limiting unpreserved appellate arguments to review for fundamental error).

To demonstrate fundamental error, Adelson must show “that a verdict of guilty could not have been obtained without the

assistance of the alleged error.” *State v. Delva*, 575 So. 2d 643, 644–45 (Fla. 1991) (quoting *Brown v. State*, 124 So. 2d 481, 484 (Fla. 1960)).

D. Leon County residents were capable of trying Adelson’s case solely upon the evidence presented in the courtroom.

A defendant seeking a change of venue carries a heavy burden. He must demonstrate that “the general state of mind of the inhabitants of a community is so infected by knowledge of the incident and accompanying prejudice, bias, and preconceived opinions that jurors could not possibly put these matters out of their minds and try the case solely upon the evidence presented in the courtroom.” *McCaskill v. State*, 344 So. 2d 1276, 1278 (Fla. 1977) (quoting *Kelley v. State*, 212 So. 2d 27, 28 (Fla. 2d DCA 1968)).

Adelson argues that he was entitled to a change of venue under *McCaskill* due to the pretrial publicity surrounding his case. The defendant in *Rolling v. State* made the same argument, unsuccessfully. Danny Rolling gained infamy by brutally murdering five University of Florida students in 1990. The Associated Press described Rolling as “Florida’s most notorious serial killer

since Ted Bundy.”¹¹ Despite Rolling’s portrayal in the media, the Florida Supreme Court held that Rolling was properly brought to trial in Alachua County, where he murdered his five victims. 695 So. 2d 278, 287 (Fla. 1997). The Supreme Court rejected Rolling’s change-of-venue argument using a two-prong analysis that considered “(1) the extent and nature of any pretrial publicity; and (2) the difficulty encountered in actually selecting a jury.” *Id.* at 285.

1. *The pretrial publicity surrounding Markel’s murder did not prevent Adelson from receiving a fair trial.*

Adelson cannot meet his burden under the first prong of *Rolling*: to demonstrate that the extent and nature of the pretrial publicity warranted a change of venue. *Rolling* gives trial courts five factors to determine whether pretrial publicity warrants a change of venue:

1. the length of time that has passed from the crime to the trial and when, within this time, the publicity occurred;
2. whether the publicity consisted of straight, factual news stories or inflammatory stories;

¹¹ Ron Word, *Florida Slayer Put to Death by Injection*, Associated Press, Oct. 25, 2006, <https://bgfalconmedia.com/108026/news/bg-news/florida-slayer-put-to-death-by-injection/>

3. whether the news stories consisted of the police or prosecutor's version of the offense to the exclusion of the defendant's version;
4. the size of the community in question; and
5. whether the defendant exhausted all his peremptory challenges

Rolling, 695 So. 2d at 285.

More than nine years passed between Markel's murder and Adelson's conviction. In *Rolling*, the Court found that a change of venue was unnecessary when three and one-half years passed between the murders and Rolling's trial. *See Rolling*, 695 So. 2d at 284.

Adelson failed to make a record as to whether the publicity surrounding Adelson's trial consisted of straight, factual news or inflammatory stories. Most of the prospective jurors learned about Markel's murder through professional news outlets like ABC, CNN, Fox, the Tallahassee Democrat newspaper and WCTV—a local television station affiliated with CBS. Nothing in the record suggests that these professional news outlets said anything inflammatory about Adelson.

The pretrial publicity in *Foster v. State* was more inflammatory than any of the media coverage surrounding Adelson's case.

Still, the Supreme Court of Florida held that Foster was not entitled to a change of venue. Foster was the leader of a group of young men in Fort Meyers that called themselves the “Lords of Chaos.” These young men murdered a high school band teacher who caught the Lords of Chaos vandalizing a school. 778 So. 2d 906, 909–10 (Fla. 2000). Foster moved to change venue because of the negative publicity leading up to his trial. As part of his motion, Foster provided newspaper articles and television broadcasts reporting his plan to go to Disney World and kill Black tourists. One of these articles referred to Foster as a psychopath; “Opie with a gun”; and a “Jekyll-and-Hyde” character. Another newspaper article—published just two days before Foster’s trial—read, “Old Sparky's hot jolt may await Foster.” The same article called Foster a “redneck, racist, [and a] gun-crazed punk.” Despite such negative publicity, the Court held that “the media coverage *as a whole* did not reach such an inflammatory level to have irreversibly infected the community so as to preclude an attempt to secure an impartial jury.” *Id.* at 913–14 (emphasis added).

Adelson also failed to demonstrate that the publicity surrounding his trial supported the State’s viewpoint. Nothing in the

record suggests that the major news outlets served as a mouthpiece for the police or the state attorney's office. One prospective juror did volunteer that former prosecutor and Court TV host Vinnie Politan had expressed negative views about Adelson. But this juror could not remember what Politan said. The juror also took Politan's negative view of Adelson with a grain of salt: "[Politan is] from Jersey . . . He's a prosecutor. . . He has opinions about a lot of people and they're normally not positive." (R. at 2340–1.)

Adelson cannot argue that his trial occurred in a small community. According to the United States Census Bureau, Leon County had 292,198 residents in 2020.¹² By comparison, there were 181,596 residents in Alachua County in 1990—four years before Danny Rolling's trial.¹³ If Rolling could receive a fair trial in 1994 Gainesville, then Adelson could receive a fair trial in 2023 Tallahassee.

¹² U.S. Census Bureau, 2020 Census Population and Housing Map, Florida, <https://public.tableau.com/app/profile/us.census.bureau/viz/shared/56MBKF9GJ>

¹³ U.S. Census Bureau, 1990 Census of Population General Population Characteristics Florida, <https://www2.census.gov/library/publications/decennial/1990/cp-1/cp-1-11-1.pdf>

Adelson's use of peremptory challenges also undermines his argument. Adelson did not use all nine of his peremptory strikes until the end of jury selection, when he used his leftover peremptory challenges to back-strike two prospective jurors. At this point, the State and Adelson had already accepted 12 jurors for the main jury. (R. at 3261-2). If the minds of Leon County residents were truly infected, then Adelson would have run out of peremptory challenges long before 12 jurors were seated.

2. *Adelson had no difficulty in selecting a jury.*

Adelson cannot meet his burden under the second prong of *Rolling*, which addresses the difficulty in selecting a jury. While 22 prospective jurors said they could not be fair, 30 of the prospective jurors had never heard of the Markel murder. Also, whenever a prospective juror expressed an opinion about Adelson's guilt, the trial court erred on the side of caution: "[O]nce a prospective juror has provided that opinion, it definitely skews towards their excusal." (R. at 2265.) At the end of the initial screening, Adelson agreed to 58 prospective jurors for the final phase of jury selection.

E. Adelson’s case was not like *Manning v. State*.

Adelson relies on *Manning v. State*, one of the few cases where the Supreme Court of Florida found that a trial court abused its discretion by not granting a change of venue. The defendant in *Manning* was a Black man accused of murdering two “well-liked Caucasian deputies” in Columbia County in 1976. The Court described these murders as “the ‘main topic of conversation in this small rural community.’” At the time of the 1980 census, 35,399 people lived in Columbia County.¹⁴ Because of the local animosity towards Manning, the Public Defender’s Office recused itself and Manning had to be moved to a jail in another county for his safety. The Court described the news coverage surrounding Manning’s case as “intense,” adding that both the police and the prosecutor made press releases relaying their version of the deputies’ murders. 378 So. 2d 274, 274–75 (Fla. 1979). The Court also noted the extent to which Manning’s jury pool was tainted: “Every member of this prospective jury had

¹⁴ Florida Office of Economic & Demographic Research, Columbia County, <https://www.edr.state.fl.us/Content/area-profiles/county/columbia.pdf>

knowledge of ex parte statements of the evidence against the accused.” *Id.* at 276.

Adelson’s case was nothing like *Manning*. Tallahassee in 2023 was not a “small rural community.” None of the prospective jurors interviewed mentioned press releases from the police or the state attorney’s office. Not every prospective juror had heard of Markel’s murder or Adelson’s prosecution. Also, Adelson’s case did not involve the racial hostility that influenced the Supreme Court’s holding in *Manning*.

II. STRIKING THE JURY PANEL WAS UNNECESSARY, AND ADELSON’S ARGUMENT IS PROCEDURALLY BARRED.

Adelson argues that the trial court should have struck the entire jury pool because a few prospective jurors made comments about Adelson’s case in the jury waiting room. But Adelson affirmatively accepted his jury, thereby waiving all the objections he made during jury selection. Also, the comments by the prospective jurors did not warrant striking the panel because those jurors did not mention facts that would not otherwise be presented to the jury.

A. Adelson waived his argument by accepting the jury without objection.

Adelson affirmatively accepted his jury without reserving his objection to the jury pool. Adelson also failed to renew his motion to strike the jury pool after the trial court swore in the jury. (R. at 3263–4.) This Court made clear in *Johnson v. State* that a defendant must renew any objection to the jury pool before the jury is sworn: “[A]ppellant claims the trial court abused its discretion in denying his motion to strike the venire . . . this claim is not preserved for appeal because appellant's motion was not renewed once jury selection was complete or before the jury

was sworn.” 141 So. 3d 698, 699 (Fla. 1st DCA 2014). *See also Hayes v. State*, 954 So. 2d 1265, 1266 (Fla. 5th DCA 2007) (holding that defendant waived his motion to strike the entire jury pool because defendant did not renew his objection before the jury was sworn).

Because Adelson waived his objection to the jury pool, this Court should affirm Adelson’s conviction without considering his argument on the merits.

B. Adelson failed to comply with Florida Rule of Criminal Procedure 3.290.

Florida Rule of Criminal Procedure 3.290 requires that “[a] challenge to the panel shall be in writing and shall specify the facts constituting the ground of the challenge.” Adelson’s oral motion was legally insufficient. This Court recognized the importance of a written motion in *Cargill v. State*, 121 So. 3d 1157, 1159 (Fla. 1st DCA 2013) (holding that defendant’s objection to the jury panel was “not open for consideration on review” because it was not in writing and untimely). Because Adelson failed to comply with Rule 3.290, his argument is either waived or unpreserved.

C. If this Court reaches the merits of Adelson’s argument, the standard of review is fundamental error.

Adelson argues that the standard of review is abuse of discretion. Adelson is mistaken. Because he failed to preserve his motion to strike the jury pool and failed to file a legally sufficient motion, Adelson’s argument is unpreserved. Adelson, therefore, has the burden of demonstrating fundamental error. See § 924.051(3), Fla. Stat. (limiting unpreserved arguments to fundamental error review on appeal). To demonstrate fundamental error, Adelson must show “that a verdict of guilty could not have been obtained without the assistance of the alleged error.” *Delva*, 575 So. 2d at 644–45 (quoting *Brown*, 124 So. 2d at 484).

D. The isolated comments of a few prospective jurors did not warrant striking the entire jury pool.

Adelson moved to strike the jury pool after a handful of prospective jurors made comments about Adelson’s case. The Supreme Court of Florida said in *Johnson v. State* that “in order for the statement of one venire member to taint the panel, the venire member must mention facts that would not otherwise be presented to the jury.” 903 So. 2d 888, 897 (Fla. 2005).

Most of the prospective jurors cited in Adelson’s brief only spoke about facts that were eventually addressed during Adelson’s trial. One of the prospective jurors said Markel’s murder happened nine years prior. (R. at 2545.) Another member of the jury pool incorrectly believed that Adelson’s case was a “federal case.” Other members surmised that they had been called for a case concerning the murder of an FSU professor. One of these prospective jurors mentioned Markel’s kids and a divorce. (R. at 2534–5.) *Johnson* makes clear that these comments were no reason to strike the entire pool of prospective jurors: “No venire member in Johnson's case mentioned a fact that would not otherwise be presented to the jury.” *Johnson*, 903 So. 2d at 897.

Adelson also complained that two prospective jurors expressed their opinion that Adelson was guilty. But the Supreme Court said in *Johnson* that “a venire member's expression of an opinion before the entire panel is not normally considered sufficient to taint the remainder of the panel.” *Id.* The prospective jurors who expressed opinions about Adelson’s guilt could not have poisoned the whole jury pool. One prospective juror merely mentioned to another jury pool member, “I think he did it.” (R. at 2586.) The other prospective juror expressed his opinion that

Adelson was guilty and that jury selection would last all day. (R. at 2535–6.)

These two comments about Adelson’s guilt pale in comparison to the statements at issue in *Brower v. State*, where a group of prospective jurors discussed hanging the defendant instead of sitting through a long trial. While the *Brower* court found these comments “shocking,” the court affirmed, holding that the defendant received a fair trial from “jurors who had not acted offensively” and were not “otherwise tainted.” 727 So. 2d 1026, 1027 (Fla. 4th DCA 1999). Like the defendant in *Brewer*, Adelson received a fair trial from well-mannered, untainted jurors.

III. ADELSON’S TEXT MESSAGES REFLECTING “NORMAL COMMUNICATION” WERE IRRELEVANT.

Adelson argues that he should have been allowed to show the jury over 400 text messages taken from his phone. None of the text messages Adelson sought to introduce into evidence contained any relevant information. Also, some of Adelson’s texts contained sexual, racist, and misogynistic references that would have embarrassed Adelson had they been admitted. In any event, Adelson suffered no harm because he testified about the content of his text messages.

A. Adelson invited the error he alleges on appeal.

While the trial court would not admit all of Adelson’s 400-plus text messages, the court said it would consider admitting individual messages that were relevant. But Adelson never offered any individual text messages for the trial court to consider. (Trial Tr. at 1595–6.) Thus, the trial court gave Adelson an avenue to enter relevant text messages, but Adelson declined to take it. This Court, therefore, should reject Adelson’s argument under the invited error doctrine. *See Sullivan v. State*, 303 So. 2d 632, 635 (Fla. 1974) (“It is well-established law that where the trial judge has extended counsel an opportunity to cure any error,

and counsel fails to take advantage of the opportunity, such error, if any, was invited and will not warrant reversal.”)

B. If this Court considers the admissibility of Adelson’s text messages, the standard of review is fundamental error.

Adelson’s initial brief argues that the trial court should not have excluded his text conversations with Magbanua, Donna Adelson, and Wendi Adelson. (Initial Br. at 64.) But Adelson’s proffered texts also included conversations with his friends, business partners, and other medical professionals. While the trial court would not admit all 400-plus text messages, the court expressed its willingness to consider any “relevant nuggets” that went to Adelson’s state of mind. (Trial Tr. at 1589–95.)

Despite the trial court’s offer, Adelson proceeded without proffering any individual text conversations he had with Magbanua, Donna, or Wendi. Because Adelson failed to proffer any individual text messages, the trial court never ruled on any text conversations involving Magbanua, Donna, or Wendi. Adelson’s argument is therefore unpreserved. *See Louviere v. State*, 306 So. 3d 394, 397 (Fla. 1st DCA 2020) (holding that defendant failed to preserve his appellate argument where defendant never obtained

a clear ruling excluding evidence)¹⁵; *cf. Newton v. S. Florida Baptist Hosp.*, 614 So. 2d 1195, 1196 (Fla. 2d DCA 1993) (holding that plaintiff “*waived* his objection by failing to obtain a clear ruling on his objection”) (emphasis added).

If this Court considers Adelson’s unpreserved argument on the merits, it should apply the fundamental error standard of review. *See Steinhorst v. State*, 412 So. 2d 332, 338 (Fla. 1982) (“Except in cases of fundamental error, an appellate court will not consider an issue unless it was presented to the lower court.”)

To demonstrate fundamental error, Adelson must show that the outcome of the trial would have been different had the trial court admitted Adelson’s text conversations with Magbanua, Donna, and Wendi. *See Everett v. State*, 124 So. 3d 938, 939 (Fla. 1st DCA 2013) (“Fundamental error is error that under-

¹⁵ “Louviere's argument fails because he did not preserve the issue on appeal. Defense counsel did not obtain a clear ruling on his objection to the exclusion of Louviere's testimony on the [nonviolent nature of his] prior convictions. Although the trial court twice stated that it would sustain an objection to any question about the nature of Louviere's prior felonies, it never had a chance to do so because defense counsel never asked the question.” *Louviere*, 306 So. 3d at 397 (citing *Braddy v. State*, 111 So. 3d 810, 838 (Fla. 2012)).

mines the confidence in the trial outcome and goes to the very foundation of the case.”)

C. Adelson never proffered any text messages from July 2014.

Adelson’s initial brief argues that his text messages showed that “Adelson and his alleged co-conspirators . . . were communicating normally during and around the time of the murder.” (Initial Br. at 71–2.) But Markel’s murder occurred in July of 2014, while Adelson’s exhibit of 400-plus text messages detailed conversations that occurred between June 2 and June 7, 2014. (R. at 2015–65.) These texts from June 2014 corresponded to the hitmen’s first, unsuccessful attempt to kill Markel. Adelson’s attorney told the trial court he “planned on doing the same thing for July 14 through 19” (Trial Tr. at 1592–3), but Adelson never proffered any text messages from July of 2014. This Court, therefore, should reject Adelson’s argument regarding the relevance of his July 2014 text messages. *See Martin v. State*, 350 So. 3d 446, 452 (Fla. 1st DCA 2022) (“Without a proffer, an appellate court cannot determine whether an error occurred, let alone a fundamental error.”)

D. Adelson’s text messages were irrelevant.

According to Adelson, his 400-plus text messages were relevant because they established reasonable doubt and demonstrated his state of mind. Adelson is wrong on both points.

Generally, any evidence that could establish reasonable doubt is admissible, and “a close call should be resolved in the defendant’s favor as long as there is a possibility of the evidence creating a reasonable doubt.” *May v. State*, 326 So. 3d. 188, 195 (Fla. 1st DCA 2021). But “[e]vidence as to immaterial matters is inadmissible for any purpose . . .” *Erp v. Carroll*, 438 So. 2d 31, 37 (Fla. 5th DCA 1983).

Adelson could not establish reasonable doubt by showing that he texted people about immaterial matters. Just because Adelson never texted Magbanua, Donna, or Wendi¹⁶ about murder did not mean that Adelson was unaware of the plot to kill Markel. *See May*, 326 So. 3d at 192 (holding that defendant could not use financial audit reports to show he never committed

¹⁶ Besides being irrelevant, Adelson sent suspicious texts on June 7, 2014—the day after the hitmen returned to Miami after their first, failed attempt to kill Markel. On that day, Adelson texted Magbanua, “Are you ok? Call me.” Later that day, Wendi sent a text to Adelson saying “What’s up? Call me.” To this, Adelson responded, “Sure.” (R. at 2061–3.)

fraud when the proffered audits would not have detected the fraud alleged by the State).

Adelson's texts were also irrelevant because they did not support his theory of defense: that Magbanua and the hitmen killed Markel in a scheme to extort Adelson. *See Arroyo v. State*, 252 So. 3d 374, 378 (Fla. 3d DCA 2018) (finding no abuse of discretion in excluding text messages that "were marginally relevant" and "not relevant to the defendant's theory of the case").

Adelson's other argument is that his text messages demonstrated his state of mind. This is wrong. Section 90.803, Florida Statutes, recognizes two types of hearsay statements that are relevant to demonstrate the declarant's state of mind: (1) statements that prove the declarant's state of mind at a "time when such state is an issue in the action," and (2) statements that prove or explain the declarant's subsequent conduct. § 90.803(3)(a), Fla. Stat. The thoughts expressed in Adelson's text messages were not relevant to any "issue in the action." Adelson's texts also failed to prove or explain Adelson's subsequent conduct. *See Penalver v. State*, 926 So. 2d 1118, 1128 (Fla. 2006) ("[S]tatements admitted under the state of mind exception to the hearsay rule are properly admitted only if they involve the state

of mind of the declarant and there is evidence demonstrating that the declarant acted in accord with the state of mind or intent.”)

The fact is that Adelson did not offer his text messages to demonstrate his state of mind. Instead, Adelson tried to use his texts to show that he had not aided Magbanua and Garcia in the plot to murder Markel. But a defendant cannot offer state-of-mind evidence to prove prior conduct. Chief Judge Ervin recognized in *Reed v. State* that “a statement of the declarant's then-existing state of mind is admissible to prove or explain the declarant's subsequent conduct but not his prior conduct.” 438 So. 2d 169, 172 (Fla. 1st DCA 1983) (Ervin, C.J., concurring) (quoting Charles W. Ehrhardt, *Florida Evidence*, § 803.3B, p. 261(1977)).

Like Adelson, the defendant in *Cotton v. State* tried to use his self-serving statements to show that he was unaware of a crime. The police caught Cotton with a package containing cocaine during a traffic stop. Cotton told the police that the driver had just handed him the package, and he had no idea that it contained cocaine. Cotton argued that “his denial of guilty knowledge to the police [came] within [the] ‘state of mind’ excep-

tion to the hearsay rule.” The Fourth District Court of Appeal rejected that argument. Instead, the Fourth District held that Cotton’s statement was “precisely the type of self-serving exculpatory statement that has been traditionally regarded as inadmissible hearsay because of its lack of reliability and trustworthiness.” 763 So. 2d 437, 442 (Fla. 4th DCA 2000) (en banc). While Adelson’s texts were not expressly exculpatory, Adelson offered his texts for the same purpose as the statements proffered in *Cotton*: to show that Adelson was unaware of a criminal act. But like the statements proffered in *Cotton*, Adelson’s texts were not reliable or trustworthy evidence of Adelson’s ignorance of the plot to kill Markel.

E. The trial court’s exclusion of the text messages did not harm Adelson.

This Court should affirm because the trial court’s ruling did not prejudice Adelson. See § 924.33, Fla. Stat. (requiring appellate courts to affirm unless “an error was committed that injuriously affected the substantial rights of the appellant.”) The trial court’s exclusion of Adelson’s text messages was harmless for four reasons.

First, Adelson testified that he reviewed every text message

he sent and received between June 2 and June 7 of 2014, and none of those texts discussed Markel's murder. (Trial Tr. at 1596.) The text messages themselves would have been cumulative to this testimony. *See Calhoun v. State*, 138 So. 3d 350, 361 (Fla. 2013) (holding that any error in excluding defendant's self-serving statements was harmless beyond a reasonable doubt where the "statements were cumulative to other information elicited during the trial"); *see also Linic v. State*, 80 So. 3d 382, 389 (Fla. 4th DCA 2012) (holding that exclusion of father's testimony about defendant being a Bosnian refugee was harmless because "some of this testimony was heard by the jury").

Second, the texts would have likely angered the jury. Some of Adelson's texts contained racist words and references. (R. at 2016; 2021; 2023; 2033.) Other texts were sexually explicit. (R. at 2017.) Still others were misogynistic. (R. 2055; 2062.) The trial court's exclusion of Adelson's distasteful texts avoided their prejudicial effect. Adelson, therefore, cannot complain that he suffered prejudice due to the trial court's ruling. *See* § 924.051(3), Fla. Stat. ("A judgment or sentence may be reversed on appeal only when an appellate court determines after a review of the complete record that prejudicial error occurred").

Third, the jury heard recordings of Adelson speaking about Markel's murder after "the bump." This evidence showed that Adelson preferred to speak about Markel's murder either over the phone or in person. Adelson also spoke very cautiously about Markel's murder, often using coded language. For example, Adelson had a phone call with Donna where she told Adelson that "it's clear what's wanted . . . This TV is probably about five." Donna's use of "TV" is significant because Adelson had joked that buying Wendi a TV was cheaper than hiring a hitman.¹⁷ Adelson knew exactly what Donna's coded language meant, and he responded, "They asked you for \$5,000?" (Trial Tr. at 1176–7.) Another example was Adelson's conversation with Magbanua at Dolce Vita restaurant, where Adelson spoke of a "horrible crime" involving a gun. During this conversation, Adelson posited a hypothetical resembling Markel's murder where the killer would rent a car and drive to Orlando to rob a McDonald's. (Trial Tr. at 1198–1207.) Because Adelson was so cautious about discussing Markel's murder over the phone and in person, the jury would not be shocked to learn that Adelson avoided discussing the

¹⁷ Trial Tr. at 275, 549, 754; 1157.

murder over text. Adelson's attorney even admitted during closing arguments that it did not "make any sense for a guy who is about to . . . murder someone, to go around town and advertise it[.]" (Trial Tr. at 2102.)

Fourth, Magbanua's testimony crushed Adelson's claim that he was unaware of the plot to kill Markel. Around Halloween of 2013, Adelson asked Magbanua, "do you know anybody that can harm someone?" In response, Magbanua "said yes and kind of left it alone." (Trial Tr. at 670–73.) Later, Adelson told Magbanua that he wanted "Wendi's husband" killed. Adelson claimed that Wendi's husband "was a terrible man and making his family go through a lot, custody wise, with his sister." According to Adelson, this turmoil had caused his mother to stop eating and sleeping. Adelson added that his father's health was also in decline. (Trial Tr. at 674–5.) Magbanua said that Adelson became "a little more adamant about this job getting done" in June of 2014. (Trial Tr. at 683–4.)

Adelson initiated Markel's murder by giving Magbanua a manila envelope containing the information Garcia would need to find Markel. Adelson took steps to ensure that his DNA and fingerprints would not be on the envelope or its contents, and he

advised Magbanua to do the same. (Trial Tr. at 679–82.)

It was clear from Magbanua’s testimony that Adelson kept his discussion of the murder plot to a minimum and preferred to communicate about the murder in person. Magbanua’s testimony also showed that Adelson took measures to conceal his connection to Markel’s murder and the hitmen. The jury, therefore, would have been unsurprised to learn that Adelson did not text about the plot to kill Markel.

ISSUE IV: ADELSON’S OUT-OF-COURT STATEMENT ABOUT EXTORTION WAS INADMISSIBLE HEARSAY.

Adelson claims that the trial court should have admitted a phone call where Adelson spoke with Donna about extortion. In this call, Adelson told Donna, “‘I’m just telling you it it’s not done like that. It’s not. I know for a fact it’s not. [I]t’s not done like that at all. . . . it’s not done in such a nice manner.” (Trial Tr. at 1782–3.) According to Adelson, this statement proved he had been the victim of extortion.

Adelson’s statement in this phone call was inadmissible hearsay because it was offered for the truth of the matter asserted: that Adelson had experienced extortion. Also, Adelson’s statement did not fall under the state-of-mind exception to the hearsay rule because it described the past conduct of other people.

A. The standard of review is mixed because Adelson never argued that his statement was not hearsay.

When the trial court asked Adelson’s lawyer why Adelson’s statement was not inadmissible hearsay, Adelson’s lawyer responded that the statement went to Adelson’s “state of mind.” (Trial Tr. at 1786.) In other words, Adelson argued that his

statement was hearsay, but subject to an exception to the general rule prohibiting hearsay evidence.¹⁸ But on appeal, Adelson makes an additional argument: his statement was not hearsay because it was not offered for the truth of the matter asserted. This argument is unpreserved because Adelson did not raise it in the trial court. *See Reynolds v. State*, 934 So. 2d 1128, 1140 (Fla. 2006) (holding that defendant failed to preserve appellate argument that statements were not offered for the truth of the matter asserted when defendant did not make that argument in the trial court).

Adelson's argument that his statement was not hearsay is subject to fundamental error review. *See* § 924.051(3), Fla. Stat. (limiting unpreserved arguments to review for fundamental error). This Court should review the trial court's rejection of Adelson's state-of-mind argument for abuse of discretion. "A court abuses its discretion when no reasonable person would take the position of the trial court on a matter, considering any findings which are supported in the record." *Harris v. State*, 347 So. 3d

¹⁸ *See Sigismondi v. State*, 380 So. 3d 1208, 1215 (Fla. 2d DCA 2024) (recognizing statements of a declarant's then-existing state of mind as an exception to the hearsay rule) (quoting Section 90.803(3)(a)(2), Fla. Stat.)

72, 75 (Fla. 1st DCA 2021).

B. Adelson’s statement alluding to extortion was hearsay.

Adelson argues that his statement alluding to extortion was not hearsay because it was not offered for the truth of the matter asserted. Adelson is wrong. Adelson wanted the jury to believe his statement about extortion was true, so his statement was hearsay. This Court recognized in *Chatman v. State* that “[i]f an out-of-court statement is offered in court to prove the truth of the facts contained in the statement, it is hearsay.” 687 So. 2d 860, 862 (Fla. 1st DCA 1997) (quoting Charles W. Ehrhardt, *Florida Evidence*, § 801.2 at 556–57 (1996 ed.)).

C. Adelson’s remarks about extortion did not fall within the state of mind exception to the hearsay rule.

According to Adelson, his statement about extortion fell under the state-of-mind exception to the hearsay rule. Adelson’s argument fails for three reasons.

First, Adelson’s statement did not fall under the state-of-mind exception because the statement did not reflect Adelson’s mental or physical state. Section 90.803(3) allows hearsay evi-

dence that shows “the declarant's then-existing state of mind, emotion, or physical sensation, including a statement of intent, plan, motive, design, mental feeling, pain, or bodily health.” § 90.803(3)(a), Fla. Stat. Instead of offering his statement to reflect his state of mind, Adelson offered his statement to prove that Garcia and Magbanua extorted him.

Second, Adelson wanted to use his statement to show he had been extorted in the past. But the state of mind exception to the hearsay rule only encompasses future conduct, not prior conduct. *See Reed*, 438 So. 2d at 172 (Ervin, C.J., concurring) (“[A] statement of the declarant's then-existing state of mind is admissible to prove or explain the declarant's subsequent conduct but not his prior conduct.”) (quoting Charles W. Ehrhardt, *Florida Evidence*, § 803.3B, p. 261 (1977 ed.)); *see also R.J. Reynolds Tobacco Co. v. Hamilton*, 316 So. 3d 338, 342 (Fla. 4th DCA 2021) (“[A] hearsay statement which recounts ‘observations made previously’ is by definition an ‘after-the fact statement of memory’ and expressly excluded from the state of mind exception.”) (citing § 90.803(3)(b) 1., Fla. Stat.) (prohibiting admission of any “after-the-fact statement of memory or belief to prove the fact remembered or believed” unless it relates to declarant’s will).

Third, Adelson could only use the state-of-mind exception to explain his own conduct, not the conduct of another. Adelson, therefore, could not use his own out-of-court statement to show that Garcia or Magbanua extorted him. *See Shepard v. United States*, 290 U.S. 96, 98 (1933) (holding that victim’s statement, “Dr. Shepard has poisoned me,” did not fall within state-of-mind exception; evidence of the declarant’s state of mind is only admissible to explain the declarant’s actions, not “as proof of an act committed by someone else”); *see also Sybers v. State*, 841 So. 2d 532, 545 (Fla. 1st DCA 2003) (“The courts of this state have repeatedly held that out-of-court statements . . . cannot be used to prove the state of mind or motive of someone other than the declarant.”)

D. Excluding Adelson’s phone call did not prejudice him.

Adelson must demonstrate that the trial court’s ruling excluding his phone call was an “error that injuriously affected [his] substantial rights.” *See* § 924.33, Fla. Stat. Adelson fails to meet this burden for four reasons.

First, Adelson’s statement to Donna suggested that he was familiar with the concept of extortion—not that he had been the

victim of extortion. But most people are familiar with how extortion works even if they have never been extorted. Adelson's statement, therefore, was marginally relevant at best.

Second, Adelson was allowed to testify about the contents of his phone call with Donna. Adelson told the jury that he advised Donna "[t]hat it's not done this way I know for a fact, and I'm 99 percent sure it is what I thought it was." (Trial Tr. at 1788.)

Third, the jury heard Adelson make an almost identical statement to Donna in one of the phone calls that the State published. The jury heard the State's "Call R," where Adelson and Donna discuss "the bump." In that call, Adelson told Donna "I actually do know how these things are done. And that was the same thing that I said, it's not done like this." (Trial Tr. at 1284.) When Adelson took the stand, he explained the above statement. According to Adelson, he meant that "it's not the same people that extorted me that are extorting [Donna]. It's clearly not the same as the first extortion." (Trial Tr. at 1798-9.)

Fourth, other phone calls between Adelson, Magbanua, and Garcia disproved Adelson's story about being extorted. After the undercover FBI agent approached Donna, Adelson called

Magbanua and explained that he believed Donna was being blackmailed. During this conversation, Adelson brainstormed with Magbanua as to who might blackmail Donna. But Adelson never said anything that implied that he had been extorted, too. (Trial Tr. at 1218–20.) Later, Adelson called Magbanua to tell her about a “birthday present” Adelson had left for Garcia. Adelson said, “if you don't think it will cause anything, you can tell him it was from me when he opens up the present.” (Trial Tr. at 1406–9; 1417.) In another call between Adelson and Magbanua, Adelson revealed that he was aware—but not surprised—that “Katie’s baby daddy” (Garcia) called the undercover FBI agent on Adelson’s behalf. (Trial Tr. 1430.) In a subsequent phone call, Magbanua told Garcia “I told [Adelson] like, you’d help him, you know . . . I’ll try to help out.” Garcia replied, “You know what, I’ll take care of it.” (Trial Tr. at 1438.) Later, Adelson called Magbanua to let her know that the undercover agent was “a pot-bellied pig.” In this call, Adelson asked Magbanua, “you know what a pig is?” (Trial Tr. 1454–9.) These phone calls did not depict Adelson interacting with his extortionists. Instead, these calls revealed that Adelson, Magbanua, and Garcia were co-

conspirators that cooperated to determine the identity of the undercover FBI agent.

ISSUE V. ADELSON’S CUMULATIVE ERROR ARGUMENT FAILS BECAUSE HIS OTHER ARGUMENTS ARE PROCEDURALLY BARRED, MERITLESS, OR BOTH.

Adelson argues that the alleged errors in his other four arguments resulted in a cumulative error that deprived Adelson of a fair trial. But all of Adelson’s other arguments are procedurally barred, meritless, or both. Outside of his four main arguments, Adelson alleges no additional errors that affected his trial. Adelson’s claim of cumulative error, therefore, necessarily fails. See *Alcegaire v. State*, 326 So. 3d 656, 671 (Fla. 2021) (“[W]here the alleged errors urged for consideration in a cumulative error analysis are individually either procedurally barred or without merit, the claim of cumulative error also necessarily fails.”) (quoting *Bush v. State*, 295 So. 3d 179, 214 (Fla. 2020); *Israel v. State*, 985 So. 2d 510, 520 (Fla. 2008)).

CONCLUSION

Any Florida jury would have convicted Charles Adelson for effectuating the murder of Daniel Markel. Adelson was an essential link between Markel and the man who killed him: Sigfredo Garcia. Katherine Magbanua was the other essential link between Garcia and Markel, and her testimony explained how Adelson was the driving force that caused Markel's death. Adelson's text messages and phone calls could not have changed the outcome of his trial. This Court should affirm Adelson's convictions for first degree murder, conspiracy to commit murder, and solicitation to commit murder.

CERTIFICATE OF SERVICE

I certify that a copy of this answer brief has been served on the following recipients through the Florida Courts E-Filing Portal on September 4, 2025:

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CERTIFICATE OF COMPLIANCE

In accordance with Florida Rule of Appellate Procedure 9.045(e), I certify that this document was computer generated using Arial 14-point font. In accordance with Florida Rule of Appellate Procedure 9.210(a)(2)(B), I certify that this brief does not exceed 13,000 words.

Certified and filed by:

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