APPENDIX A

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D22-1167

STEVEN ALEXANDER MANTECON,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

On appeal from the Circuit Court for Jackson County.
Ana Maria Garcia, Judge.

September 27, 2023

RAY, J.

Steven Alexander Mantecon appeals his convictions for one count of second-degree murder with a firearm, two counts of shooting into an occupied vehicle, and ten counts of aggravated assault with a firearm. He argues that the trial court erred by allowing a State witness to opine on whether his use of deadly force was reasonable and by denying his motion for judgment of acquittal on the aggravated assault charges. He also argues that the use of a six-person jury violated his constitutional rights. For the reasons below, we affirm.

Facts

Given the nature of the issues on appeal, we begin with a comprehensive account of the facts.

Mantecon was charged with one count of second-degree murder with a firearm (count I), two counts of shooting into an occupied vehicle (counts II–III), and ten counts of aggravated assault with a firearm (counts IV–XIII).[1] The victim of the second-degree murder charge was Blake Allen Cain. The victims of the aggravated assault charges were J.W., Jarrot Jones, Tyler Rabon, L.W., Myra Miles, Marcus Smith, Shane Austin Moody ("Austin"), Gavin Tucker Moody ("Tucker"), Nathan Christopher Hollon, and Lillian Rozier.

The State's evidence established that in August 2020, a dispute broke out between Mantecon's family and Cain's family. At that time, Mantecon was twenty-one years old, and Cain was eighteen years old. Mantecon's sister had dated Cain, but their relationship had ended months earlier. They had since argued about Mantecon's sister returning a ring Cain had given her. The situation prompted a Snapchat phone conversation, during which Mantecon and Cain agreed to settle the matter with a fistfight later that night.

According to his then-fiancée, Brianna McDonald, Mantecon went home and began shooting his AR-15 rifle in his family's backyard range. The rifle was on the dining room table after he came back inside, though it was normally kept in a gun safe in the garage. McDonald did not initially notice when Mantecon left the house for the fight, but she did observe that the rifle was gone while he was gone.

That night, Cain and his friends met at a local park. The people in the crowd ranged in age from about sixteen to twenty-one years old. They parked their vehicles close together so that

[1] Mantecon was also charged with two counts of criminal mischief, but the trial court granted his motion for judgment of acquittal on those charges.

they could talk. They were there to socialize, but some had also heard about the impending fistfight between Mantecon and Cain and wanted to watch.

Mantecon drove up in a pickup truck, parking sideways at a distance from the others. He stayed in his vehicle and argued with Cain, who was standing alone in front of his own truck. During their argument, Austin asked if he could approach Mantecon's truck to calm the situation down. But Austin testified that Mantecon told him, "Enter at your own risk." Tucker remembered Mantecon saying that no one should approach his truck or something bad would happen. Jones heard Mantecon say, "Walk up at your own risk." Regardless of the exact phrasing, Austin's cousin, Blake Martin, persuaded him not to go. No one else approached Mantecon's truck or tried to do so.

Eventually, Mantecon left and several of Cain's friends believed that the fight was off. While Mantecon was driving home, he was on speakerphone with McDonald when Cain called Mantecon's sister. His sister was in the room with McDonald and put her call on speakerphone as well. Mantecon overheard Cain saying unpleasant things and telling his sister to send Mantecon back to the park. Mantecon ended his call with McDonald by telling her that he would be home in a few minutes.

Ten or fifteen minutes after Mantecon left the park, he returned and parked in the same spot. Cain was again standing in front of his truck. Cain always carried a firearm, but four witnesses testified that he was not armed during this confrontation. Tucker testified that Cain had placed his gun on a toolbox in the bed of his pickup while he was cleaning out the truck. Smith also testified that before Mantecon arrived, Cain moved the firearm from inside his truck to the toolbox and left it there. J.W. testified that the gun was already on the toolbox during Mantecon's first visit to the park. Hollon testified that when Mantecon came back, Cain pulled the gun out of his truck, held it in the air, and put it on his toolbox before walking to the front of his truck. No one approached Mantecon's truck.

Mantecon and Cain began arguing again. Jones heard Mantecon say that "he wanted all of us." Then Mantecon started

shooting out of his driver's side window with an AR-15 rifle. He fired at least fourteen shots, with three striking Cain. The rest hit Cain's truck, Jones's truck, Martin's truck, and Lillian Rozier's car. Austin, Tucker, Smith, Jones, Jaycee King (the girlfriend of Jones), Hollon, L.W., and J.W. testified that when Mantecon fired, Cain did not have a gun. Austin, Smith, and L.W. testified that Cain had not threatened to shoot Mantecon. Similarly, Rozier testified that she never saw Cain threaten anyone with a firearm.

When Mantecon opened fire, Tucker was standing by the back of Cain's truck. Tucker thought Mantecon was trying to shoot him and his friends. He ducked out of fear of being shot. He described Mantecon as "shooting all over," hitting multiple vehicles.

Smith also testified that Mantecon was shooting at him and the crowd, causing him to drop to the ground out of fear of being shot. Jones likewise took cover because he believed that Mantecon was shooting at him.

Austin was walking toward Cain's truck when Mantecon started shooting. He saw the rifle come out of the driver's side window, then Cain got shot and stumbled backward. After Cain fell, Mantecon "shot up" at least three vehicles.

Hollon, who was standing at the back of Cain's truck, saw the rifle barrel come out of the window. He watched Cain get shot and believed Mantecon was aiming at the whole group. Hollon dropped to the ground.

King was sitting in Jones's truck when bullets hit the windshield, and she got down on the floorboard for safety. Afterward, Jones drove her to her grandmother's home. She was so scared that she stayed on the floorboard until they arrived.

Miles was in Rabon's truck when the gunshots began. She did not see the shooting, but she got down on the floorboard so the truck's door would shield her from the bullets.

Martin was looking over his dash when he saw Mantecon stick the rifle out of his window. Bullets then hit his truck's hood, roof, windshield, rear window, radiator, and condenser. Afterward, he

was so shaken that he asked Hollon to check if he (Martin) had been shot.

Rozier's car was parked beside Cain's truck. At the time of the shooting, she was in the bed of Hollon's truck. She did not see Mantecon fire any shots, but she heard the gunshots and was afraid of being hit. Bullets struck the windshield and backseat of her car.

L.W. was behind Cain's truck. He did not see Mantecon's rifle before he ducked down, but he did see a bullet fly right past him and spark the ground. He ran to Tucker's truck and dove into the floorboard to avoid being shot.

J.W. was behind Cain's truck when he saw Mantecon stick the barrel of his rifle out of the window. He tried to yell, "Get down!" But before he could finish yelling, Mantecon began shooting. Fearing for his life, he ran toward Rabon's truck.

Rabon was halfway between his truck and Martin's when he saw "fireballs" come from the driver's side of Mantecon's truck. With bullets still flying, he ran toward his friends. He saw Cain fall, and more shots were fired after that. Rabon was afraid that he or someone he loved would be shot. He saw Mantecon put his truck in reverse, still shooting, and then drive away.

Cain's friends tried to revive him, but he never responded. He was declared dead at the scene. He had a bullet wound in his chin and two in his back. A bullet hit his kidney, pancreas, liver, and lung. Another hit his spinal column, severed his spinal cord, and fractured his ribs.

Austin testified that after the shooting, no one moved anything away from Cain's body. Similarly, Tucker and Hollon testified that they did not see anyone remove anything from Cain's hands or pockets, and Cain was not within reach of the gun on his toolbox during the shooting. L.W. and Rabon also testified that they did not see anyone remove anything from Cain's body. Miles testified that she did not see a weapon nearby when she approached Cain to render aid.

Austin and Smith acknowledged that they did not see Mantecon aim at anyone besides Cain or hear him make any explicit verbal threats. Jones and Hollon each testified that Mantecon did not point the rifle at them.

According to McDonald, when Mantecon returned home, he told her with a blank expression, "I shot him and tried to hit as many witnesses as possible." He also said that Cain had a gun. He then wiped down his rifle, disassembled it, and threw it in the sage field beside his house. But after speaking with his parents, he retrieved the rifle and reassembled it, though he could not find the magazine.

When McDonald was questioned by the police shortly after the shooting, she denied knowing anything about what had happened. She testified that at the time, she loved Mantecon, they were engaged, she was afraid, and she was living with his family. She also said that she was on "autopilot" after Mantecon told her what happened.

McDonald and Mantecon subsequently broke up, though she continued living with his family for a time. One day, she went into the sage field and found the magazine. She put it in the garage on top of the gun safe, but she did not know what became of it.

Later, when the State subpoenaed her, she told the truth about what she knew. By then, she had no loyalty to Mantecon. He had cheated on her and ended their relationship. At the time she was subpoenaed, she was engaged to someone else. Still, she testified that she probably would not have gotten involved in the case if she had not been subpoenaed. She also acknowledged that when the defense subpoenaed her, she missed her deposition and did not speak with defense counsel until the week of trial.

Police responding to the scene that night found twelve shell casings in two groupings that were several feet apart. Some casings were located as far as fifty-two feet away from the victim. In addition to the three bullets that hit Cain, bullets struck his windshield; Jones's windshield; Rozier's windshield, backseat, and trunk; and Martin's windshield, right headlight, the center of his hood, the visor above the driver's seat, the roof, the rear window,

and the rear driver's-side door. Two more shell casings were found during a search of Mantecon's truck. A Florida Department of Law Enforcement laboratory analyst testified that the AR-15 rifle used during the shooting was a semiautomatic weapon, and the trigger had to be pulled each time a person wanted to fire a round.

Investigators also found a handgun on the toolbox of Cain's pickup truck. His body was about twelve feet away from the gun.

While the defense was cross-examining J.W., he was asked about a statement he made to the police suggesting Mantecon may have thought he would be attacked by Cain's friends:

> Defense Counsel: Now, your impression of this, okay, based on what you was seeing [sic] going on, isn't it a fact, sir, that you believed that somebody was gonna jump on [Mantecon]?
>
> J.W.: No, sir.
>
> Defense Counsel: Did you tell that to the police?
>
> J.W.: No, sir, that I know nobody [sic] was gonna jump on him.
>
> Defense Counsel: Was there anything that anybody did that would make somebody think that they were gonna jump on [Mantecon]?
>
> J.W.: No, sir, Blake was standing by hisself [sic].
>
> Defense counsel: You did give a statement to the police, correct?
>
> J.W.: Yes, sir.
>
> Defense Counsel: Okay. And you can look at that. I just handed you a statement. Can you look at that . . . and see if that's your statement, sir?
>
> J.W.: Yes, sir.

. . . .

Defense Counsel: Okay. My question, again, was anybody doing anything to make [Mantecon] believe they were fixing to jump on him?

J.W.: No, sir.

Defense Counsel: Did you not tell that to the police?

J.W.: No, sir.

Defense Counsel: All right. What did you tell the police then?

J.W.: I told them that I guess he just seen there was a whole bunch of people, but, I mean, it was really just for them watching. That's what most people were doing, they were really watching.

Defense Counsel: And the officer said, right, then what did you say?

. . . .

J.W.: I guess [he] thought they were going to jump him.

Defense Counsel: And your meaning to the officer, at that time, was [Mantecon] thought that all these people were gonna jump him, right?

J.W.: That's the question she asked.

Defense Counsel: Okay. And that's the answer you gave?

J.W.: (No audible response).

On redirect, the State asked questions designed to clarify J.W.'s statement to the police:

State: [J.W.], when the officer asked you that question, she was just trying to get you to [answer], . . . why would he do this . . . ?

J.W.: Yes, [ma'am].

State: And . . . you say, I guess he thought that they were going to jump him?

J.W.: Yes, sir—yes, ma'am. My fault, I'm sorry.

. . . .

State: Okay. Well, she specifically asked you why would he do this, right?

J.W.: Yes, ma'am.

State: And then your response was, I guess he just seen a whole bunch of people, and then you said they were just there watching, right?

J.W.: Yes, ma'am.

State: And then you said, and I guess he thought they were going to jump him, correct?

J.W.: Yes, ma'am.

State: Did you know that's what he was thinking?

J.W.: No, ma'am, that's just, a whole bunch of people there, and she asked that question, that's just what I gave her.

. . .

State: Did you see anything happen, at any course that night at that park, that you thought would make it reasonable for Mantecon to shoot, anything that you saw that he should have thought they were gonna do that?

J.W.: No, ma'am.

Defense counsel objected either after or simultaneously with J.W.'s answer to that last question. The trial court overruled his objection and told J.W. that he could answer. J.W. asked the State to repeat the question and then confirmed what he saw:

> State: Did you see anything that would have caused you to believe that he should have shot to save himself?
>
> J.W.: No, ma'am.
>
> State: So, you didn't see anybody threatening him with a firearm or anything like that?
>
> J.W.: No, ma'am.
>
> State: Did you see anybody waving a gun around or anything like that?
>
> J.W.: No, ma'am.

At the close of the State's case, defense counsel moved for a judgment of acquittal on the aggravated assault counts. He argued there was no evidence that Mantecon was trying to shoot anyone but Cain, and the other victims just happened to be in the area. Counsel also noted that Mantecon did not directly threaten any of the victims. The trial court denied the motion, relying on McDonald's testimony and the fact that multiple vehicles had been shot, including vehicles that were not directly behind Cain and his truck.

Mantecon then testified in his own defense. He explained that he and his family are hunters, and he shoots guns regularly. The pickup truck belonged to his father, but Mantecon drove it to work. The AR-15 rifle was kept under the truck's backseat, and he sometimes used the rifle to hunt. On the day of the shooting, after he had agreed to the fistfight with Cain, he and his mother used the family's backyard shooting range. She shot her pistol so she

could vent her frustration over the ongoing dispute with Cain's family. He denied having any other firearms with him.

That night, Mantecon went to meet Cain at the park. He was in his father's truck and the rifle was already inside. When he arrived, he noticed the other vehicles in the parking lot. Their headlights were on, so he had trouble seeing anything behind the lights. But he could hear voices and see silhouettes behind Cain's truck. Cain was standing in front of his truck, and no one was beside him. Mantecon and Cain "talked some trash," but Mantecon did not get out of the truck because he was nervous that Cain's friends might jump him. This fear stemmed from the number of people present. He eventually reversed his truck and left.

On the way home, he got a phone call from McDonald. He could hear his sister in the background on speakerphone talking to men who were screaming at her. His sister said that Cain wanted Mantecon to return to the park. Cain suggested that Mantecon was a coward for leaving, but Mantecon said he was concerned that Cain's friends would jump him. His sister told him that Cain had assured her the fight would remain between Mantecon and Cain. Mantecon believed Cain, so he returned to the park.

When he arrived, Cain was still standing in front of his truck. No one else was near him. Mantecon stayed in his truck, moving his phone, wallet, and cigarettes out of his lap and placing them on the center console. Cain urged him to get out, and Mantecon told Cain to hold on.

According to Mantecon, Cain asked him if he was going to shoot. When Mantecon said no, Cain said, "[B]ecause then I'm going to shoot." Cain pulled out a gun from his waistband or pocket, held it up in the air, and started to bring it down to aim. Mantecon reached beneath the backseat and pulled out the rifle. He "jammed the barrel into the floorboard of the backseat to rack a shell in." He pointed it out the window and started shooting at Cain.

The rifle did not have a sight, so Mantecon could not aim accurately. He was hoping to scare or hit Cain to stop him from

shooting. He could not escape without reversing, and he could not reverse without looking away from Cain. So, he fired as quickly as he could, shooting at Cain and not anyone else. When Cain fell, Mantecon put his truck into reverse and drove away. He never saw Cain fire a shot. He denied discussing the shooting with McDonald, wiping down the rifle, or removing the magazine. He said that he had only one magazine for that rifle and when he got home, he put the rifle beside the water heater in the garage.

He acknowledged that based on the number of shell casings found, he had fired fourteen times and would have had to pull the trigger each time he fired. He confirmed that Cain dropped in the place he had been standing. He also agreed that at the time of the shooting, he was upset and frustrated enough about the situation to fight Cain. When the State questioned his inability to aim without a sight, observing that every bullet he fired hit a person or a vehicle, he said that the vehicles were in a cluster. When the State asked if he was an "amazingly lucky shot," hitting windshields and passenger compartments where people would have been sitting, Mantecon again emphasized how close together the vehicles were. But he denied shooting while his truck was moving.

Mantecon was convicted on all thirteen counts. He was sentenced to life in prison with a twenty-five-year mandatory minimum sentence on count I, fifteen years in prison on each of counts II and III, and five years in prison on each of counts IV through XIII. His sentences were imposed to run consecutively.

Analysis

With that background in mind, we now turn to the three issues on appeal. As previously noted, Mantecon argues that the trial court erred by allowing a State witness to opine on whether Mantecon's use of deadly force was reasonable and by denying his motion for judgment of acquittal on the aggravated assault charges. He also argues that the use of a six-person jury violated his constitutional rights. We disagree with each of his arguments.

I

First, Mantecon challenges the decision allowing J.W. to testify that Mantecon did not have a legitimate reason to shoot. He argues that J.W. gave an improper lay-witness opinion on an issue that was for the jury to decide. He claims the error was not harmless because the course of events was unclear, with some eyewitnesses corroborating Mantecon's story and others who did not. He argues that J.W.'s testimony may have influenced the jury on whether he fired in self-defense.

Rulings on evidentiary matters are reviewed for an abuse of discretion. *McDuffie v. State*, 970 So. 2d 312, 326 (Fla. 2007). Discretion is abused if the trial court bases its ruling on an erroneous interpretation of the rules of evidence and the relevant case law. *Patrick v. State*, 104 So. 3d 1046, 1056 (Fla. 2012). "A court's erroneous interpretation of these authorities is subject to *de novo* review." *McCray v. State*, 919 So. 2d 647, 649 (Fla. 1st DCA 2006).

Generally, a lay witness may not testify in the form of opinions and conclusions. *Williams v. State*, 257 So. 3d 1192, 1196–97 (Fla. 1st DCA 2018). The exception to this rule applies when:

> (1) The witness cannot readily, and with equal accuracy and adequacy, communicate what he or she has perceived to the trier of fact without testifying in terms of inferences or opinions and the witness's use of inferences or opinions will not mislead the trier of fact to the prejudice of the objecting party; and
>
> (2) The opinions and inferences do not require a special knowledge, skill, experience, or training.

§ 90.701, Fla. Stat. (2020). Under this exception, opinion testimony "is usually limited to matters relating to distance, time, size, weight, form, and identity, which are easily observable." *Bartlett v. State*, 993 So. 2d 157, 164 (Fla. 1st DCA 2008).

In support of his argument, Mantecon relies on a decision from Florida's Second District Court of Appeal, which concluded that

the victim of an aggravated battery should not have been allowed to testify that the defendant did not shoot in self-defense. In that case, the defendant was charged with two counts of first-degree murder for the deaths of James Wilson and Dorothy Moragne and one count of aggravated battery for shooting Thomas White. *Mills v. State*, 367 So. 2d 1068 (Fla. 2d DCA 1979).

The defense theory was that the defendant fired his gun out of fear that Wilson had a weapon when Wilson placed his hand in his pocket and moved toward the defendant in a threatening manner. *Id.* at 1068. During White's direct examination, the State asked if Wilson was armed. *Id.* at 1069. White answered that he was not. *Id.* He also said that he did not see Wilson reach into his pockets. *Id.* The State then asked, "Did it in any way appear to you that [the defendant] might have shot in self-defense?" *Id.* The defense objected. *Id.* The trial court overruled the objection and allowed White to answer. White responded, "He did not." *Id.*

On appeal, the Second District concluded that the trial court had improperly allowed a lay witness to testify to an opinion or conclusion, which the jury could have inferred from the facts in his testimony. *Id.* And because the events surrounding the shooting were confusing and unclear, the error was not harmless. *Id.* In that context, White's unequivocal opinion might have influenced the jury on the issue of self-defense. *Id.*

But here, even if J.W.'s testimony was otherwise inadmissible, the defense opened the door to it during his cross-examination. "As an evidentiary principle, the concept of 'opening the door' allows the admission of otherwise inadmissible testimony to 'qualify, explain, or limit' testimony or evidence previously admitted." *Overton v. State*, 801 So. 2d 877, 900 (Fla. 2001) (quoting *Ramirez v. State*, 739 So. 2d 568, 579 (Fla. 1999)). "To those ends, courts have permitted the introduction of highly prejudicial evidence that, absent a misleading representation, would not have been admissible." *Smithey v. State*, 310 So. 3d 1104, 1109 (Fla. 5th DCA 2020). The reliability of the otherwise inadmissible evidence should be considered before allowing it in. *Redd v. State,* 49 So. 3d 329, 333 (Fla. 1st DCA 2010). For instance, hearsay evidence is inherently unreliable, and therefore the trial court should balance

considerations of fairness with concerns for permitting otherwise inadmissible and unreliable testimony to be admitted. *Id.*

The principle of "opening the door" has been used to permit the admission of testimony commenting on a defendant's guilt. *Thomas v. State*, 837 So. 2d 443, 446 (Fla. 4th DCA 2002). In *Thomas*, the victim was killed when he was struck by a van. *Id.* at 444. While defense counsel was cross-examining the lead investigator, he asked whether the investigator had any suspicions that the defendant's girlfriend was driving the van at the time of the murder. *Id.* at 445. The investigator responded that he did not. *Id.* Counsel then repeatedly asked him if he had discounted the defendant's girlfriend as a suspect despite his belief that she was not telling him everything when he took her statement. *Id.* The investigator agreed that he had. *Id.* Then counsel asked if the investigator had any concerns about whether he had arrested the right suspect, and the investigator testified that he did not. *Id.* On redirect, the State asked the investigator whether, after considering the questions on cross-examination, he had wavered in his conviction that the defendant was the driver. *Id.* He responded that he had not. *Id.* at 446.

On appeal, Florida's Fourth District Court of Appeal concluded that the investigator's opinion on the defendant's guilt was not admissible. *Id.* at 446. Still, the court concluded that his testimony was invited by defense counsel's questions during cross-examination. *Id.* The court reasoned that the questions about the investigator's certainty as to whether he arrested the right person had opened the door to further questions clarifying his conclusions based on his investigation. *Id.* at 447.

Here, defense counsel repeatedly asked J.W. about the statements he made when a police officer invited him to speculate about why Mantecon fired at the crowd. J.W. admitted telling the officer that Mantecon might have been afraid that Cain's friends would jump him. On redirect, J.W. clarified that he did not know what Mantecon was thinking when he started shooting, and he did not see any of his friends do anything threatening. Admittedly, the phrasing of the questions did touch upon whether Mantecon perceived the need to defend himself. But when viewed in context, the State sought to clarify the opinion defense counsel had elicited

as to whether Mantecon fired out of fear of Cain's friends. Even when the State asked if he saw anything happen that he "thought would make it reasonable for [Mantecon] to shoot," the State added, "anything that you saw that he should have thought they were gonna do that?" This limited J.W.'s answer to clarifying whether Cain's friends acted as if they were going to jump Mantecon.

When the State repeated the question, the phrasing was more ambiguous. J.W. was asked, "Did you see anything that would have caused you to believe that he should have shot to save himself?" But considering the question that preceded it and the follow-up questions, it was clear that the State was still asking whether Cain's friends had threatened Mantecon. Ultimately, the State elicited testimony that nothing J.W. saw would have justified the belief that Cain's friends were going to jump Mantecon. Thus, the State was clarifying the opinion defense counsel elicited on cross-examination about Mantecon's perception of the danger posed by the crowd. While J.W.'s speculation about what Mantecon perceived was not reliable, J.W. acknowledged that he did not know what Mantecon was thinking at the time. And his opinion on whether the crowd acted in a threatening manner was based on what he personally observed.

Even if the defense had not opened the door to this testimony, any error in its admission was harmless. *See Kolp v. State*, 932 So. 2d 1283, 1285 (Fla. 4th DCA 2006) (applying a harmless error analysis to the erroneous admission of lay-witness testimony). The harmless error test requires the State to "prove beyond a reasonable doubt that the error complained of did not contribute to the verdict or, alternatively stated, that there is no reasonable possibility that the error contributed to the conviction." *State v. DiGuilio*, 491 So. 2d 1129, 1135 (Fla. 1986). In a harmless error analysis, "[t]he focus is not on the strength of the state's case, but rather on the effect of the error on the jury." *Alvarez v. State*, 147 So. 3d 537, 543 (Fla. 4th DCA 2014). "The court must consider whether the erroneously admitted evidence was an important part of the State's case." *Schluck v. State*, 329 So. 3d 231, 239 (Fla. 1st DCA 2021).

Here, the challenged testimony did not undermine Mantecon's defense theory, and there is no reasonable probability that it contributed to the verdict. In response to the questions on redirect, J.W. testified that during Mantecon's first visit to the park, the crowd was unarmed and did not look as if it would attack Mantecon. That testimony mirrored his testimony on direct examination explaining that none of his friends were armed or had threatened Mantecon. Six State witnesses also testified that during Mantecon's first visit to the park, no one in the crowd was armed and no one approached Mantecon's truck.

What's more, Mantecon never testified that anyone in the crowd approached his truck, threatened him, or brandished a weapon. Rather, he testified that during his first trip to the park, he was afraid of being attacked only because of the number of people present. He returned to the park after being assured by his sister that Cain intended to keep the fight between the two of them. When he returned, he claimed that he fired at Cain because Cain threatened to shoot him and pointed a gun at him. He emphasized that he was not shooting at anyone but Cain, and he did not intend to hit anyone or anything else. Thus, his defense theory was not undermined by J.W.'s testimony that nothing the crowd did should have caused Mantecon to shoot.

Furthermore, during closing arguments, the State did not mention the challenged testimony. In fact, the State did not discuss J.W.'s testimony at all. Instead, the State argued that because Cain did not point a firearm at Mantecon, he had no reason to fire at Cain in self-defense. To show that Mantecon was firing at the crowd, the State relied on the number of bullets fired and the damage to multiple vehicles, along with the fact that Mantecon was shooting even after Cain collapsed and then kept shooting as he reversed his truck and drove away. The State also relied on McDonald's testimony that Mantecon told her he was trying to hit witnesses, and the fact that every bullet fired struck a person or vehicle. The State briefly mentioned during its rebuttal that Mantecon's self-defense theory only applied to the second-degree murder charge, and it reminded the jury there was no testimony that any of the aggravated assault victims did anything to threaten Mantecon other than be present at the scene.

By contrast, defense counsel twice referenced J.W.'s statement to the police that Mantecon was afraid of being attacked by Cain's friends the first time he came to the park. Counsel argued that if Mantecon was going to fabricate a story to support a self-defense theory, his story would have been stronger if he had fired when he was concerned not only about Cain but also about his friends. Instead, Mantecon had testified that he left due to his fear of Cain's friends and returned only after he was assured that the fight would be with Cain alone. The overarching defense theory was that when Mantecon returned to the park, he fired his rifle because Cain pointed a gun at him and threatened to shoot. Defense counsel argued that although Mantecon fired additional shots, he did not have a sight on the rifle to aim with, he did not know when he hit Cain, and he did not intend to hit anyone else. Counsel emphasized that Mantecon was only firing to defend himself from Cain.

Under these circumstances, J.W.'s challenged testimony was not an important part of the State's case, and there is no reasonable probability that it contributed to the verdict. *See Reed v. State*, 208 So. 3d 1231, 1234–35 (Fla. 1st DCA 2017) (holding that an erroneous jury instruction was harmless because the State barely mentioned the instruction during closing arguments, and the defense rebutted it with counter evidence during its closing).

II

Next, Mantecon claims that the trial court erred in denying his motion for judgment of acquittal on the ten aggravated assault counts. He makes two arguments: (a) he did not threaten the aggravated assault victims; and (b) even if he did intentionally fire at them, he did not intend to merely threaten them but to shoot them, which would mean that he intended an aggravated battery or a murder and not an aggravated assault. Because he did not present the second argument to the trial court, it was not preserved for appellate review. *See Morales v. State*, 170 So. 3d 63, 66 (Fla. 1st DCA 2015) ("Appellate courts have repeatedly declined to review the denial of a motion for judgment of acquittal where the motion failed to make the specific argument raised on appeal.").

As for his first argument, Mantecon contends there was no evidence that he expressly threatened the aggravated assault victims. Many victims were not looking at him when he fired his rifle, and none of them testified that they saw him aim at them.

"A trial court's denial of a motion for judgment of acquittal is reviewed de novo." *Perez v. State*, 187 So. 3d 1279, 1281 (Fla. 1st DCA 2016). "The conviction is supported by sufficient evidence where a rational trier of fact could find the existence of the elements of the crime beyond a reasonable doubt after viewing the evidence in the light most favorable to the State." *Knight v. State*, 186 So. 3d 1005, 1012 (Fla. 2016). A trial court should not grant a motion for judgment of acquittal unless the State fails to establish a prima facie case. *State v. Lee*, 230 So. 3d 886, 888 (Fla. 4th DCA 2017) (citations omitted).

Aggravated assault requires, in part, "an intentional, unlawful threat by word or act to do violence to the person of another, coupled with an apparent ability to do so, and doing some act which creates a well-founded fear in such other person that such violence is imminent." § 784.011(1), Fla. Stat. (2020). "The 'threat' element addresses the defendant's intent, not the reaction of the person perceiving the word or act. It is the defendant's word or act that must be reviewed to determine whether it constitutes a 'threat,' not the reaction of the person perceiving the word or act." *Benitez v. State*, 901 So. 2d 935, 937 (Fla. 4th DCA 2005).

This Court has addressed the "threat" element of section 784.011 in a case where it was unclear whether the defendant intended to hit the people he was shooting at. *See Williams v. State*, 238 So. 3d 915 (Fla. 1st DCA 2018). In *Williams*, the defendant was charged with attempted second-degree murder for shooting at Elroy Howard and two counts of aggravated assault with a deadly weapon for shooting at Fredrika Dixon and Gary Byrd. *Id.* at 915–16. The evidence showed that the defendant argued with Howard while Byrd and Dixon were standing nearby. *Id.* at 916. The defendant told Howard "he wanted to kill him 'so bad' he could 'taste it.'" *Id.* He said to Howard that if Byrd and Dixon wanted to stand "right there," he would "kill [his] ass," adding "I know them two bitches going to put me in prison." *Id.* Then he pulled out a semiautomatic rifle and fired several shots

"in Howard's general direction." *Id.* When Byrd tried to get the defendant to stop shooting, the defendant used a racial slur and told him to "shut the hell up." *Id.* Byrd and Dixon hid until the defendant left. *Id.*

On appeal, the defendant argued that the aggravated assault charges were not supported by sufficient evidence because he never threatened Byrd or Dixon. *Id.* at 916. This Court observed that "an aggravated assault conviction requires neither a pointed gun nor an explicit threat." *Id.* The issue was then framed as "whether a reasonable jury could have concluded from the evidence that Williams intentionally and unlawfully threatened Dixon and Byrd 'by word or act.'" *Id.* (quoting § 784.011, Fla. Stat.).

This Court acknowledged the evidence did not show that the defendant explicitly threatened or aimed the gun at either Byrd or Dixon. *Id.* Still, it relied on the defendant's statements to Byrd—when he screamed a racial slur and told him to shut up after he had just shot at someone—as evidence he was threatening to harm Byrd if he kept talking. *Id.* at 916–17. We considered the evidence related to Dixon to be a "closer call." *Id.* at 917. But it still showed that the defendant told her to move away when he was threatening to kill Howard, and he knew she would put him in prison. *Id.* Thus, we concluded that "a reasonable jury could conclude from these statements—and the surrounding circumstances—that [the defendant] intentionally threatened Dixon with harm." *Id.*

Here, as in *Williams*, the evidence was far from conclusive on the issue of whether Mantecon intentionally fired at the aggravated assault victims. The testimony established that the victims of the aggravated assault counts—J.W., Jones, Rabon, L.W., Miles, Smith, the Moody brothers, Hollon, and Rozier—were all parked close to Cain's truck so they could socialize. At least two State witnesses acknowledged that they did not see Mantecon aim his gun at anyone other than Cain. Mantecon testified that he had only intended to shoot at Cain and not anyone behind him.

But there was also evidence that Mantecon made threatening comments to people other than Cain. The first time Mantecon came to the park, Austin tried to approach Mantecon's truck and Mantecon warned him, "Enter at your own risk." Tucker and Jones

also testified that they heard Mantecon threaten harm to anyone who approached his truck. When Mantecon returned to the park, Jones heard him say that "he wanted all of us" before he started shooting.

And the State presented evidence that would support an inference that Mantecon was specifically shooting at the aggravated assault victims. Tucker testified that Mantecon was "shooting all over," hitting multiple vehicles. Tucker, Smith, Jones, and Hollon testified that they believed Mantecon was trying to shoot not only at Cain, but also at the entire group. Each of those witnesses said that he believed Mantecon was shooting at him. L.W. testified that he saw a bullet fly right past him and spark the ground nearby. Rabon testified that Mantecon kept shooting after Cain collapsed, and he was still shooting as he reversed to drive away. All the witnesses described dropping to the ground or taking cover to avoid being shot.

In addition to the bullet wounds in Cain's body and the holes in his truck, bullet holes were found in the windshield or passenger compartments of three other vehicles. Martin was in his truck when it was shot, and King was in Jones's truck when it was shot.[2] There were two groupings of shell casings, some as far away as fifty-two feet from Cain. Mantecon fired at least fourteen rounds, and he had to pull the trigger each time. Every bullet hit a vehicle or a person. And according to McDonald, Mantecon told her after the shooting that he had been trying to "hit as many witnesses as possible."

Under these circumstances, there was sufficient evidence from which the jury could infer that Mantecon intentionally threatened the victims. *Cf. Bryant v. State*, 154 So. 3d 1164, 1165 (Fla. 2d DCA 2015) (holding that sufficient evidence supported a conviction for aggravated assault with a deadly weapon when the defendant fired into a group of men that included the intended

[2] Although Martin and King were the victims of the shooting into an occupied vehicle charges, this evidence still suggests Mantecon was shooting at all of Cain's friends.

victim, causing the others to "run and duck down" and one of them was "in shock" and "scared").

III

Finally, Mantecon claims that his constitutional rights were violated when he was tried by a six-person jury rather than a twelve-person jury. Because he did not make this argument below, it may be reviewed only for fundamental error. *See Jackson v. State*, 983 So. 2d 562, 568 (Fla. 2008). But as he concedes in his reply brief, this Court has already held that trying a defendant with a six-person jury in a non-capital case is not fundamental error. *See Jack v. State*, 349 So. 3d 925, 927 (Fla. 1st DCA 2022).

AFFIRMED.

ROWE and WINOKUR, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Jessica J. Yeary, Public Defender, and Victor D. Holder, Assistant Public Defender, Tallahassee, for Appellant.

Ashley Moody, Attorney General, and Adam Wilson, Assistant Attorney General, Tallahassee, for Appellee.

APPENDIX B

DISTRICT COURT OF APPEAL, FIRST DISTRICT
2000 Drayton Drive,
Tallahassee, Florida 32399-0950
Telephone No. (850) 488-6151

November 29, 2023

Steven Alexander Mantecon VS	**Case 1D2022-1167**
State of Florida	L.T. No.: 20-451CF

BY ORDER OF THE COURT:

The Court denies the motion for rehearing docketed October 12, 2023.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

Served:
Kerry Adkison
Hon. Ana Maria Garcia
Victor D. Holder
Ashley Moody
Adam Blair Wilson
Hon. Jessica J. Yeary

TH

1D2022-1167 November 29, 2023
Kristina Samuels, Clerk
1D2022-1167 November 29, 2023

APPENDIX C

Supreme Court of Florida

THURSDAY, APRIL 18, 2024

Steven Alexander Mantecon,
Petitioner(s)
v.
State of Florida,
Respondent(s)

SC2024-0001
Lower Tribunal No(s).:
1D2022-1167
322020CF000451CFAXMX

This cause having heretofore been submitted to the Court on jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Article V, Section 3(b), Florida Constitution, and the Court having determined that it should decline to accept jurisdiction, it is ordered that the petition for review is denied.

No motion for rehearing will be entertained by the Court. *See* Fla. R. App. P. 9.330(d)(2).

CANADY, COURIEL, GROSSHANS, FRANCIS, and SASSO, JJ., concur.

A True Copy
Test:

SC2024-0001 4/18/2024
John A. Tomasino
Clerk, Supreme Court
SC2024-0001 4/18/2024

LC

Served:

CRIMINAL APPEALS TLH ATTORNEY GENERAL
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