TEAM: 112

Criminal No.: 2024-CR-319

IN THE SUPERIOR COURT OF THE STATE OF STETSON

PINELLA COUNTY JUDICIAL DISTRICT

September 1, 2024

STATE OF STETSON,

*Prosecution,*

v.

JAY CAMERON,

*Defendant.*

**PROSECUTION’S MEMORANDUM OF LAW**

**IN OPPOSITION OF DEFENDANT’S MOTION TO DISMISS**

**TABLE OF CONTENTS**

TABLE OF CONTENTS i

TABLE OF AUTHORITIES iii

INTRODUCTION 1

STATEMENT OF THE FACTS 2

ARGUMENT 5

1. The Court should dismiss the Defendant’s Motion to Dismiss because the Defendant was carrying a concealed weapon right before the shooting and does not have a concealed carry license 5
2. The Court should dismiss the Defendant’s Motion to Dismiss because the Defendant was the aggressor and no exception applies 7
	1. The Defendant was the initial aggressor because he shot Wilson first, or alternatively he became the aggressor when he shot Wilson in the back 9
		1. The Defendant was the initial aggressor because he shot first, and Wilson did not have a weapon at the beginning of the encounter 9
		2. If the Court finds that the Defendant was not the initial aggressor, he became the aggressor when he shot Mr. Wilson in the back because Wilson was not in a position to harm the Defendant at that time 11
	2. No exception applies because the Defendant did not have a reasonable belief that he was in imminent danger of death or great bodily harm and did not exhaust every reasonable means to escape such danger 12
		1. Wilson did not exert a force or threat of force to give the Defendant a reasonable belief that he was in imminent danger of death or great bodily injury 13
		2. The Defendant did not exhaust every reasonable means to escape the perceived danger when he turned around and shot Wilson in the breezeway, and when he shot Wilson again in the back 15

CONCLUSION 18

**TABLE OF AUTHORITIES**

FEDERAL CASES

*Andersen v. United States,*

170 U.S. 481 (1898) 9, 11

*Brown v. United States*,

256 U.S. 335 (1921) 14

*Colorado v. New Mexico*,

467 U.S. 310 (1984) 8

*D.C. v. Heller*,

554 U.S. 570 (2008) 5

*Gourko v. United States*,

153 U.S. 183 (1894) 11

*Rowe v. United States,*

164 U.S. 546 (1896) 8

*United States. v. Slocum*,

486 F.Supp. 2d 1104 (C.D. Cal. 2007) 7

*United States v. Smith*,

No. 23-1314, 2024 U.S. App. LEXIS 20728 (10th Cir. Aug. 16, 2024) 9

*Wiggins v. Utah*,

 93 U.S. 465 (1876) 10

STATE CASES

*Brown v. State*,

227 So. 3d 185 (Fla. Dist. Ct. App. 2017) 14

*Carpenter v. State*,

593 So.2d 606 (Fla. Dist. Ct. App. 1992) 6

*Dorelus v. State*,

 747 So. 2d 368 (Fla. 1999) 5

*Elifritz v. Fender*,

460 F. Supp. 3d 1088 (D. Or. 2020) 14

*Ensor v. State*,

403 So. 2d 349 (Fla. 1981) 6

*Fry v. State*,

915 S.W. 2d 554 (Tex. App. 1995) 14

*George v. Morris*,

736 F.3d 829 (9th Cir. 2013) 14, 15

*Humphrey v. State,*

966 S.W.2d 213 (Ark. 1998) 14

*Johnson v. State*,

268 So. 3d 806 (Fla. Dist. Ct. App. 2019) 11

*Mackey v. State,*

 83 So. 3d 942 (Fla. Dist. Ct. App. 2012) 6, 7

*Padron-Canto v. State,*

414 So. 2d 1151 (Fla. Dist. Ct. App. 1982) 6

*People v. Belpedio,*

569 N.E.2d 1372 (Ill. App. Ct. 1991) 9, 11

*People v. Freeman*

600 N.E.2d 862 (Ill. App. Ct. 1992)...........................................................15, 16, 17

*People v. Guja,*

51 N.E.3d 970 (Ill. App. Ct. 2016) 11

*People v. Ozarowski,*

344 N.E.2d 370 (N.Y. 1976) 14

*Saxton v. State,*

 385 So. 3d 753 (Miss. 2024) 14

*State v. Bierma*,

2024-Ohio-2089 9, 11

*State v. Cartwright*,

650 P.2d 758 (Mont. 1982) 15

*State v. Collins,*

461 P.3d 828 (Kan. 2020) 16

*State v. Church,*

 51 S.E.2d 345 (N.C. 1949) 12

*State v. Harris*,

870 S.W.2d 798 (Mo. 1994) 14

*State v. Holland,*

138 S.E. 8 (N.C. 1927) 13

*State v. Patton*,

 479 So. 2d 625 (La. Ct. App. 1985) 9

*State v. Perez*,

2010-Ohio-3168 (Ct. App.) 9

*State v. Salary,*

343 P.3d 1165 (Kan. 2015) 15

*State v. Simon,*

646 P.2d 1119 (Kan. 1982) 13

*Sutton v. State*,

12 Fla. 135 (1867) 5

**STATUTES**

Ste. Stat. § 776.012 (2022) 5, 8

Ste. Stat. § 776.032 (2022) 5

Ste. Stat. § 776.041 (2022) ........................................................................................*passim*

Ste. Stat. § 790.01(2) (2022) 5

Fla. Stat § 776.041 (2024) 8

Mo. Rev. Stat. § 563.031 (2016) 8

Ala. Code § 13A-3-23 (2022) 8

18 Pa. Cons. Stat. Ann. § 505 (2024) 8

**MISCELLANEOUS**

Bruce M. Lawlor, When Deadly Force is Involved (2017) 13

**INTRODUCTION**

The Court should deny the Defendant’s Motion to Dismiss because the Defendant may not seek immunity under Stand Your Ground because he was carrying a concealed weapon at the time of the shooting, and he was the aggressor.

The Defendant was carrying a concealed weapon right before the shooting because he put it in his hoodie pocket and no part of it was visible. Therefore, because the Defendant did not have a concealed carry license at the time, he was engaged in unlawful behavior and is barred from seeking immunity under Stetson’s Stand Your Ground laws.

Additionally, the Defendant may not seek immunity under Stand Your Ground because he was the initial aggressor by shooting Wilson first and because Wilson did not initially have a deadly weapon. Alternatively, if the Court finds that the Defendant was not the *initial* aggressor, he *became* the aggressor when he shot Wilson in the back. Because the Defendant was the aggressor, he does not qualify for immunity under Stand Your Ground because his subjective fear of imminent danger was not reasonable and he did not exhaust every reasonable means of escape, but instead shot Wilson again.

**STATEMENT OF FACTS**

On August 8, 2022, Ryan Wilson (Wilson) was outside his room at the Boats Motel with his two friends Kenny Gray and Tony. (Wilson Int. ¶57-61.) Around 9:45 am., the Defendant and his brother, Greg Cameron, walked up to Wilson. (Wilson Int. ¶57-70.) While the Defendant had seen Wilson pull guns on people before, he had never had any personal interaction with Wilson, but was “sick” of Wilson’s presence in the community. (J. Cameron Int. ¶27; 53.) The two exchanged words, the Defendant left, and Wilson went inside his room and used the restroom, then came back outside. (Wilson Int. ¶72-81.) At this point, Wilson had his black cell phone in his right pocket. (Wilson Int. ¶82-83; Ex. 13).

Around 10:30 am, the Defendant and his brother returned. (Wilson Int. ¶98) after the Defendant specifically told his brother he wanted to go back to the Motel. (G. Wilson Int. ¶112.) This time, the Defendant was walking fast with the hood of his hoodie pulled all the way up over his head and tied tightly around his face. (Wilson Int. ¶98-100.) The Defendant had his right hand stuffed into the front pocket of his hoodie, appearing to be holding an object in his pocket. (Wilson Int. ¶105-06.) Neither Wilson nor any of the three other witnesses saw what the object in the Defendant’s pocket was. (G. Cameron Int. ¶134-35; Wilson Int. ¶104-12; Gray Int. ¶74-76.)

The Defendant claims that as he passed Wilson he formed his hand to mimic a gun and said “pop pop,” but Wilson only saw him make a distracting hand gesture with his left hand and mutter an undistinguishable comment. (J. Cameron Int. ¶83; Wilson Int. ¶118-124.) Wilson put out his empty arms in confusion. (Wilson Int. ¶126-33.) The Defendant made a fist with his left hand and his thumb pointed out and slid his thumb across his neck in a sliding motion. (Wilson Int. ¶134-137.) Wilson understood this gesture to mean the Defendant was going to kill him. (Wilson Int. ¶139.)

The Defendant then disappeared into the breezeway. (Wilson Int. ¶143.) Wilson stood up to see where the Defendant was and Wilson’s friend, Tony, handed Wilson Tony’s gun as Wilson walked over to the edge of the wall to see the Defendant. (Wilson Int. ¶143-44.)

After the Defendant was in the breezeway, he spun around, pulled out a gun, and fired shots at Wilson. (Wilson Int. ¶148-50.) Wilson fired in return and was backing away as they shot back and forth a few times. (Wilson Int. ¶150-53.) Both men were struck in the crossfire. (J. Cameron Int. ¶118-123.) One of the Defendant’s shots struck Wilson in his upper left chest, causing him to fall further backward. (Wilson Int. ¶154-55.) Wilson tried to run away, but while he was turning around he slipped and fell. (Wilson Int. ¶155-59.) Wilson dropped the gun out of his right hand to catch himself on the ground, and as he tried to lift himself back up the Defendant shot him in the back. (Wilson Int. ¶159-64.) Wilson then fell to the ground and lay unconscious, (Wilson Int. ¶164-65,) his gun on the ground approximately two feet away. (G. Cameron Int. ¶220.)

Next, at the command of the Defendant, the Defendant’s brother grabbed the gun Wilson used and took off running with the Defendant. (G. Cameron Int. ¶236-38.) They ran into the Defendant’s room, left the guns there, and went to a hospital in the next county over. (G. Cameron Int. ¶240-52.)

Ultimately, Officer Hernandez interviewed the Defendant, his brother, Ryan Wilson, and Kenny Gray, all of whom gave conflicting versions of the events. In his statement, the Defendant immediately claimed that he believed Wilson was going to kill him, so he “kept walking into the breezeway” and that Wilson drew his gun and shot first. (J. Cameron Int. ¶106-114.) The Defendant admitted that he was carrying a gun and when he was walking by Wilson, he did not see Wilson with a gun but just assumed he had one. (J. Cameron Int. ¶66-68; 93-96.) The Defendant’s brother, Greg Cameron, claimed that he saw Wilson with a gun in his hand when his brother walked by, but admitted “it looked like [Wilson] was trying to run away” when the Defendant shot him again. (G. Cameron Int. ¶143-46; 232.) Because of Wilson’s surgery and medical condition, Officer Hernandez interviewed him a week later, and Wilson explained that the Defendant was the one who shot first. (Wilson Int. ¶148-50.)

 During the Defendant’s arraignment on July 15,2024, Judge Prince ordered the State and Defense to file motions based on Stand Your Ground immunity, clarifying that the prosecution bears the burden at the scheduled motion hearing of proving by clear and convincing evidence that the motion should be denied. (Arraignment Tr. ¶97-104.)

The State of Stetson now files this written objection in response to the Defense’s Motion to Dismiss.

**ARGUMENT**

1. **The Court should deny the Defendant’s Motion to Dismiss because the Defendant was carrying a concealed weapon right before the shooting and does not have a concealed carry license.**

Stetson’s Stand Your Ground laws afford immunity from criminal prosecution to those whose actions fall within the statutes. Ste. Stat. § 776.032. To seek immunity under Stand Your Ground, a person cannot be engaged in criminal activity. Ste. Stat. § 776.012. For a person to unlawfully carry a concealed firearm, the person must (1) not be licensed to carry a concealed firearm, (2) carry a firearm, and (3) conceal the firearm “on or about his person.” Ste. Stat. § 790.01(2). The right to carry and use a gun is not without limits, and an individual may not rely on the right to bear arms as an unqualified authorization to carry a firearm “in any manner whatsoever and for whatever purpose.” *D.C. v. Heller*, 554 U.S. 570, 626 (2008). Bans on carrying concealed weapons aim to prevent someone with a weapon from gaining an unfair advantage over an unsuspecting opponent who doesn't know the weapon is present. *Dorelus v. State*, 747 So. 2d 368, 370 (Fla. 1999) (citing *Sutton v. State*, 12 Fla. 135, 136 (1867)).

Here, both parties stipulated that the Defendant was not licensed to carry a firearm when he shot the victim (Stipulation No. 10). Because the Defendant admitted to carrying a firearm the issue here is whether the Defendant concealed the firearm. (J. Cameron Int. ¶66-68.)

A concealed firearm is any firearm carried on or about a person in a way that is designed to hide the gun from the ordinary sight or knowledge of others. Ste. Stat. § 790.01(2). A firearm is not concealed when it is “plainly visible to the ordinary sight of another person.” *Padron-Canto v. State,* 414 So. 2d 1151 (Fla. Dist. Ct. App. 1982)*.* The Florida Supreme Court defined “ordinary sight of another person” as “the casual and ordinary observation of another in the normal associations of life.” *Ensor v. State*, 403 So. 2d 349, 353-54 (Fla. 1981). The court also explained that a weapon does not have to be entirely hidden from or invisible to other people to be considered concealed. *Id*. Finally, *Mackey* explained that just because a person who is skilled at identifying weapons positively identifies one, this does not automatically mean the weapon was not concealed. *Mackey v. State*, 83 So. 3d 942, 946 (Fla. Dist. Ct. App. 2012), *aff'd on other grounds*, 124 So. 3d 176 (Fla. 2013).

A firearm is in plain view when the person carrying the weapon makes no conscious effort to conceal the weapon and part of the weapon is visible. *Carpenter v. State*, 593 So. 2d 606, 607 (Fla. 5th DCA 1992). In *Carpenter*, an officer pulled over the defendant, who had a handgun in the vehicle. *Id.* When the defendant got out of the vehicle and the officer looked inside, he “immediately” saw the handgun. *Id.* The handgun was in the front seat beside where the defendant was sitting, with “the grip and hammer [] sticking up six inches above the level of the seat.” *Id.* The court held that the handgun was in plain view and was therefore not concealed. *Id.* The court reasoned that the driver made no “conscious” effort to conceal the weapon with her body, and that an ordinary person standing beside the car would be able to see the handgun because six inches of the handgun were visible. *Id.*

The facts here are in stark contrast to those in *Carpenter*. Here, the Defendant’s gun was not in plain view because the Defendant put it in the front pocket of his hoodie and no part of his gun was visible. (J. Cameron Int. ¶70.) While the Defendant claims he attempted to alert others that he had a weapon, he physically put his gun inside his hoodie pocket, and never showed any part of it to anyone, which is a conscious effort to conceal it. (J. Cameron Int. ¶70-71; G. Cameron ¶134-35; Wilson Int. ¶104-12; Gray Int. ¶74-76.) Next, no part of the Defendant’s gun was ever visible until the Defendant pulled it out of his pocket. *Id*. All three witnesses never saw any part of the Defendant’s gun when it was inside his pocket. (G. Cameron ¶134-35; Wilson Int. ¶104-12; Gray Int. ¶74-76.).

Finally, applying *Mackey*, Kenny Gray claiming he believed what the Defendant was carrying could have been a gun does not negate that the Defendant was carrying a concealed weapon. Like the officer in *Mackey*, Gray has experience with firearms and “knows what it looks like when someone is packing.” (G. Cameron Int. ¶87-88; Gray Int. ¶77-78.) Further, Gray never said he saw the Defendant’s gun before the shooting, just that he “probably” had one. (Gray Int. ¶67-68.)

Therefore, there is clear and convincing evidence that the Defendant was carrying a concealed weapon because no part of his gun was visible and a reasonable person would not have known he was carrying a gun.

1. THE COURT SHOULD DENY THE DEFENDANT’S MOTION TO DISMISS BECAUSE THE DEFENDANT MAY NOT SEEK IMMUNITY UNDER STETSON’S STAND YOUR GROUND LAW BECAUSE THE DEFENDANT WAS THE AGGRESSOR AND NO EXCEPTION APPLIES.

“Civilized society does not recognize self-defense as a justification for murder so that defendants may preemptively strike and kill their enemies.” *United States v. Slocum*, 486 F. Supp. 2d 1104, 1109 (C.D. Cal. 2007). States across the country support these words by implementing strict requirements for a defendant seeking justification for the use of deadly force. *E.g.,* § 776.041, Fla. Stat.; Mo. Rev. Stat. § 563.031; Ala. Code § 13A-3-23; 18 Pa. Cons. Stat. Ann. § 505.

Stetson requires that a person “reasonably believes that using or threatening to use such force is necessary to prevent imminent death or great bodily harm to himself or herself or another . . . ” Ste. Stat. § 776.012. The person has a duty to retreat if he: (1) is engaged in a criminal activity; (2) is in a place where he does not have a right to be; or (3) is the aggressor. *Id*.

Stetson carves out two very narrow exceptions to this “aggressor” bar. The first exception states the justification is available if: (1) the force or threat of force received by the person “is so great that the person reasonably believes he or she is in imminent danger of death or great bodily injury;” and (2) “he or she has exhausted every reasonable means to escape such danger.” Ste. Stat. § 776.041(2)(a). The second exception states that justification is available if: (1) ”in good faith, the person withdraws from physical contact with the assailant; (2) indicates clearly to the assailant that he or she desires to withdraw an terminate the use or threatened use of force; and (3) the assailant continues or resumes the use or threatened use of force.” Ste. Stat. § 776.041(2)(b). This exception exists so that “the law will always leave the original aggressor an opportunity to repent before he takes the life of his adversary.” *Rowe v. United States*, 164 U.S. 546, 556 (1896).

Here, there is clear and convincing evidence that Defendant was the aggressor and that both exceptions that would allow the Defendant to seek immunity under Stetson’s Stand Your Ground law fail. *See Colorado v. New Mexico*, 467 U.S. 310, 316 (1984) (explaining that clear and convincing evidence is what gives “the ultimate factfinder an abiding conviction that the truth of its factual contentions are highly probable”).

* 1. **The Defendant was the initial aggressor because he shot Wilson first, or alternatively he became the aggressor when he shot Wilson in the back.**

Stetson’s statute defines an aggressor as someone who “initially provokes the use or threatened use of force against himself or herself.” Ste. Stat. § 776.041(2). While the issue of provocation is generally a question of fact for the jury, courts reviewing the issue have given factors to consider. *See United States v. Smith*, No. 23-1314, 2024 U.S. App. LEXIS 20728 (10th Cir. Aug. 16, 2024); *People v. Belpedio,* 569 N.E.2d 1372, 1374 (Ill. App. Ct. 1991). These factors include: (1) whether the individual premeditated the deadly force against the other person, *Andersen v. United States*, 170 U.S. 481, 508 (1898), (2) the injuries of both parties, and (3) the actions of the defendant after the encounter. *State v. Bierma*, 2024-Ohio-2089 (Ct. App.).

While Stetson law states that a person does not have the right to stand his or her ground if he or she is the aggressor, courts interpreting similar statutes have held that a person does not have the right to stand his ground when he *becomes* the aggressor. *State v. Patton*, 479 So. 2d 625, 627 (La. Ct. App. 1985); *State v. Perez*, 2010-Ohio-3168 (Ct. App.).

Here, the Defendant was the initial aggressor, and alternatively he became the aggressor when he shot Wilson in the back.

1. **The Defendant was the initial aggressor because he shot first, and Wilson did not have a weapon at the beginning of the encounter.**

A court cannot conclude that the defendant is the aggressor when: the victim had a weapon at the beginning of the encounter and there is evidence to support that the victim shot first. *Wiggins v. Utah*, 93 U.S. 465, 470 (1876). In *Wiggins*, the victim told a friend that he would “kill the defendant before he went to bed that night” and showed him his pistol. *Id*. A few minutes later, the defendant saw the victim sitting outside. *Id*. at 467-78. A shot was fired, but no witness knew from where the first shot came. *Id*. at 468. The Defendant then shot multiple times at the victim, killing him. *Id*. A total of four shots were fired, three from one gun and one from the other gun found on the scene. *Id*. at 470.

The court held that there was reasonable doubt as to whether the defendant was the aggressor. *Id*. at 469. The court reasoned that evidence showing the victim had carried a pistol at the very beginning of the encounter was probative of whether he was the initial aggressor. *Id*. at 470. Most notably, the court heavily weighed who shot first, considering the number of empty chambers in each gun and the victim threatening to kill the Defendant before the shooting. *Id*. at 469-70.

Here, the Defendant was the aggressor because the facts surrounding the shooting are different from those in *Wiggins*. First, Wilson did not have a gun at the beginning of the encounter with the Defendant, but his friend handed him one after he believed the Defendant threatened to kill him. (Wilson Int. ¶139-43.) Second, there is not the same evidence here of who shot first. No witness testified to a certain number of shots that were fired, nor did investigators disclose how many bullets each gun fired. Additionally, Wilson did not threaten to take the Defendant’s life, he simply “mov[ed] his arms out,” which differs greatly from an explicit death threat. (Wilson Int. ¶126-33.)

Finally, the additional factors from *Andersen* and *Bierma* make it even more likely that the Defendant was the initial aggressor. Here, there is evidence of the Defendant’s premeditation by the Defendant explaining that he was “sick” of Wilson’s presence in the community. (J. Cameron Int. ¶ 52), and the Defendant specifically telling his brother he wanted to go back to the Motel after he saw Wilson there. (G. Cameron Int. ¶ 112). *Gourko v. United States*, 153 U.S. 183, 191 (1894) (explaining that the defendant “arm[ing] himself . . . with the intention of putting himself in the way of his adversary, so as to obtain an opportunity to kill him” was probative of him being the aggressor). Next, Wilson’s second gunshot wound was in his back, evidencing he was turning away from the encounter and on the defensive. (Ex. 10). Finally, after the shooting, the Defendant did not call for help, but instead fled to a hospital in the next county over and never reported the incident. (G. Cameron ¶ 250-52.)

1. **If the Court finds that the Defendant was not the initial aggressor, he became the aggressor when he shot Mr. Wilson in the back because Wilson was not in a position to harm the Defendant at that time.**

Victims have a duty not to become the aggressor. *Belpedio*, 569 N.E.2d at 1375; *State v. Bierma*, 2024-Ohio-2089 (Ct. App.). Courts specifically consider whether the victim uses excessive force, *People v. Guja,* 51 N.E.3d 970 (Ill. App. Ct. 2016); and whether the victim continues the attack when the initial aggressor withdraws from the encounter. 212 Ill. App. 3d at 161; *see Johnson v. State*, 268 So. 3d 806, 810 (2019) (explaining that the defendant shooting the victims in the back multiple times “would mitigate against invoking self-defense”). A defendant becomes the aggressor when the victim is not in a position to do real harm to a person and the defendant still pursues the controversy. *State v. Church,* 51 S.E.2d 345 (N.C. 1949) (holding that the defendant became the aggressor when he shot the victim because the victim was not threatening to assault anyone and did not have a deadly weapon).

Here, assuming the Defendant was not the initial aggressor, he became the aggressor when he shot Wilson in the back because Wilson was not in a position to harm the Defendant. At this point, Wilson had already been shot once, and was half fallen onto the ground, with one arm injured from being shot, and the other arm on the ground attempting to steady himself. (Wilson Int. ¶ 158-163.) Notably, when the Defendant shot Wilson again Wilson had already dropped his gun to the ground. (Wilson Int. ¶ 158-163.) The fact that the Defendant shot Wilson in the back not only evidences Wilson’s inability to harm but also his attempt to withdraw.

Therefore, there is clear and convincing evidence that the Defendant shot Wilson first and was the initial aggressor, and was also the aggressor when he shot Wilson in the back.

* 1. **No exception applies because the Defendant did not have a reasonable belief that he was in imminent danger of death or great bodily harm and did not exhaust every reasonable means to escape such danger.**

Stetson gives the aggressor an opportunity to seek immunity under Stand Your Ground under section 776.041(2)(b). However, here, there is no evidence that the Defendant even attempted to withdraw from physical contact with Wilson during the encounter and this exception is therefore inapplicable.

An aggressor may seek justification under Stand Your Ground if: (1) the force or threat of force received by the person “is so great that the person reasonably believes he or she is in imminent danger of death or great bodily injury;” and (2) “he or she has exhausted every reasonable means to escape such danger.” Ste. Stat. § 776.041. The first element requires both a subjective and objectively reasonable belief. Here, although the Defendant stating he believed Wilson “was *going to try* to kill him,” makes it questionable whether he subjectively believed the threat was imminent, the main issue is whether the belief was reasonable. (J. Cameron Int. ¶106-114.)

Assuming the Defendant was the aggressor, he may not seek immunity under the Stand Your Ground statute because he did not have a reasonable belief of imminent death or great bodily harm and did not exhaust every reasonable means to escape such apparent danger.

1. **Wilson did not exert a force or threat of force to give the Defendant a reasonable belief that he was in imminent danger of death or great bodily injury.**

Reasonableness is what “a reasonable person would believe if faced with the same set of facts as the shooter,” and is analyzed from a third party’s point of view rather than the individual’s. Bruce M. Lawlor, When Deadly Force is Involved 122 (2017); *see State v. Simon,* 646 P.2d 1119, 1120 (Kan. 1982)*.* Imminency is when the person is “*about* to suffer death or great bodily harm.” *State v. Holland,* 138 S.E. 8, 12 (N.C. 1927). States generally do not require an overt act for a threat to be imminent but consider it in their analyses. *Saxton v. State*, 385 So. 3d 753, 764 (Miss. 2024); *Brown v. State*, 227 So. 3d 185, 187 (Fla. Dist. Ct. App. 2017); *People v. Ozarowski,* 344 N.E.2d 370, 373 (N.Y. 1976). “Possession of a dangerous weapon alone does not automatically justify the use of deadly force.” *Elifritz v. Fender*, 460 F. Supp. 3d 1088, 1106 (D. Or. 2020); *see e.g., George v. Morris,* 736 F.3d 829 (9th Cir. 2013) (finding no imminent threat when defendant held a gun but never pointed it at the deputies). While courts consider the victim’s reputation in interpreting furtive gestures, *Fry v. State*, 915 S.W. 2d 554 (Tex. App. 1995), a defendant must have more than a general concern “because of activities carried out there.” *State v. Harris*, 870 S.W.2d 798, 809 (Mo. 1994). A defendant’s furtive movement is probative of an imminent threat when the defendant has previously shot the victim and was looking for the victim. *See Humphrey v. State*, 966 S.W.2d 213 (Ark. 1998) (finding evidence of a reasonably imminent threat when the defendant reached towards his waistband and showed past aggression towards the victim).

Wilson’s actions did not create a reasonable belief of an imminent threat of death or great bodily harm. First, Wilson putting his arms out right before the shooting could be considered a furtive movement, but is starkly different from reaching towards a waistband, a common place people carry guns. (Wilson Int. ¶126-33.) While the Defendant’s brother claimed Wilson was holding a gun, the brother said the Defendant had already passed Wilson, so he would not have seen the hypothetical gun. (G. Cameron ¶143-51.) Lastly, while the Defendant claims to have seen Wilson pull guns on other people before, he has never had a dangerous encounter with Wilson himself.(J. Cameron ¶49.)

Finally, applying the reasoning from *Morris*, it is even less likely that Wilson’s actions constituted a reasonable threat of death or great bodily injury because Wilson never pointed a gun at the Defendant prior to the shooting. When Officer Hernandez asked the Defendant if Wilson pulled out a gun and pointed it at him when he walked by, he replied “[n]ot really,” and admitted that Wilson didn’t point any gun at him at that time. (J. Cameron Int. ¶93-97.)

 Based on the factors above, there is clear and convincing evidence that the Defendant’s belief of an imminent danger of death or great bodily injury was not reasonable.

1. **The Defendant did not exhaust every reasonable means to escape the perceived danger when he turned around and shot Wilson in the breezeway, and when he shot Wilson again in the back.**

When an individual is the aggressor, he must exhaust every reasonable means to escape the danger before using justified force. Ste. Stat. § 776.041. Through an objective lens, courts consider whether such possible means existed both before the encounter and during the encounter. *State v. Cartwright*, 650 P.2d 758, 763 (Mont. 1982); *e.g.*, *State v. Salary*, 343 P.3d 1165, 1175 (Kan. 2015) (explaining that a defendant “typically” does not exhaust every reasonable means to escape the danger when he “leav[es] a confrontation with an individual and then return[s] with a loaded firearm and shoot[s] that same person”).

A person has a reasonable means to escape when there is a place to safely retreat, or when the person who posed the perceived threat reasonably no longer poses such a threat. *People v. Freeman*, 600 N.E.2d 862 (Ill. App. Ct. 1992). In *Freeman*, the defendant went inside the victim’s house and saw the victim grab a knife. *Id.* at 863. The defendant punched the victim on his head and again after he fell to the ground. *Id*. The defendant took the knife from the victim and “threw it to the side,” looked for a gun in the home, and went back and punched the victim again when the victim tried to get up. *Id*. The court held that “it [was] clear” that the defendant did not “exhaust every reasonable means of escape other than the use of force.” *Id.* at 865. The court reasoned that the defendant could have fled when the victim first pulled out the knife, and the defendant had a second “opportunity to retreat” after the defendant “struck and disarmed.” *Id.*

Here, the Defendant had a reasonable means to escape both before the shooting and when Wilson was turning around. Before the shooting, Wilson had not physically assaulted him and the Defendant had a place to retreat to, evidenced by the Defendant’s statement that “I knew Wilson was going to try to kill me, *so I just kept walking into the breezeway*.” (J. Cameron ¶106-108;) *see State v. Collins*, 461 P.3d 828, 838 (Kan. 2020) (holding the defendant did not exhaust every reasonable means to escape when the victim had not assaulted him and “he could have simply kept walking into his apartment”).

After the Defendant shot Wilson, Wilson did not pose a threat because his left arm was injured from being shot in the left shoulder, his other arm was on the ground steadying himself, and he was half-fallen on the ground. (Wilson Int. ¶59-62.) Like the victim in *Freeman*, Wilson was not in a physical position to be able to retaliate. Importantly, Wilson had already dropped his gun on the ground. (Wilson Int. ¶159-64.) While the gun being two feet away could arguably be within reaching distance, the court in *Freeman* seemed to focus on the fact that the weapon was no longer in the victim's hands by only stating the knife was “to the side,” and additionally Wilson was not in a physical position to be able to grab the gun. Finally, there is more evidence here that Wilson did not pose a threat to the Defendant at this point because his back was turned to the Defendant. (Wilson Int. ¶159-164.)

Therefore, there is clear and convincing evidence that the Defendant had a reasonable means of escape before the shooting even began and when Wilson was injured and unarmed.

**CONCLUSION**

 For the foregoing reasons, the Court should deny the Defendant’s Motion to Dismiss because there is clear and convincing evidence that (1) the Defendant was carrying a concealed weapon at the time of the shooting; and (2) the Defendant was the aggressor. WHEREFORE the Prosecution respectfully prays this court deny Defendant’s Motion to Dismiss.

Dated: September 1, 2024

Respectfully submitted,

*/s/ Team 112*

*Attorney for Prosecution*