TEAM NO. 113

Case No.: 2024-CR-319

Shape

**IN THE**

**SUPERIOR COURT OF THE STATE OF STETSON**

**PINELLA COUNTY JUDICIAL DISTRICT**

Sep. 1, 2024

Shape

STATE OF STETSON,

*Prosecution*

v.

JAY CAMERON,

*Defendant*

Shape

**NON-MOVANT’S MEMORANDUM OF LAW IN OPPOSITION OF DEFENDANT’S MOTION TO DISMISS**

Shape

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INTRODUCTION

This Court should deny Defendant Jay Cameron’s (“Defendant”) Motion to Dismiss because his illegal and murderous actions prevent him from seeking sanctuary under Stetson’s Stand Your Ground law.

Seeing Ryan Wilson (“Wilson”) as a threat to his community and to his drug trafficking business, Defendant finally resolved to kill Wilson on August 6, 2022. Defendant planned to ambush Wilson, burying his gun in the pocket of his hoodie. In the hour before his attack, Defendant continually threatened to take over Wilson’s business. Right before aiming his gun at Wilson, Defendant made clear that he would do so by deadly force. Because Defendant illegally concealed his weapon and did not act in self-defense, Defendant must be prosecuted.

STATEMENT OF FACTS

On August 6, 2022, Defendant Jay Cameron shot Ryan Wilson out of sheer spite.

**Defendant sees himself as a neighborhood vigilante.**  Defendant saw himself as a vigilante—the “Robin Hood” of Stetson—using whatever means necessary to remove “threats” to his neighborhood. Defendant was even willing to risk his life to remove such threats. R. 31. His brother repeatedly warned Defendant that he did not “want those targets on his back,” yet Defendant remained steadfast in his mission to “clean up the streets” of Stetson. *Id.* His brother lamented, “[Defendant] will grow up some day, if he lives that long.” *Id.*

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**Defendant had a long-standing, one-sided grudge against Wilson for not sharing his illicit drug clientele.** Apparently, Defendant saw Wilson as the type of threat he needed to eliminate. Defendant was “sick” of Wilson. R. 20. According to the Defendant’s brother Gregory Cameron (“Greg”), Wilson had unfairly cornered the illicit drug market, and Defendant wanted it to himself. R. 31.

Defendant was constantly following Wilson’s movements at the Boals Motel and complained that Wilson “wasn’t sharing enough of the block.” R. 57. By contrast, Wilson generally saw Defendant as a non-threat. *Id.* He thought Defendant was a “little wannabe” and generally shrugged off Defendant’s comments about taking over the narcotics market. *Id.*

**August 6, 2022 from 9 to 9:30 a.m.** Defendant was staying at the Boals Motel because it is “safe, clean, a good area, and cheap.” R. 19. However, he called Greg around 9:00 a.m. because he wanted “strength in numbers.” *Id.* Greg arrived around 9:30 a.m. R. 29.

Wilson, the victim, also stayed at the Boals Motel. R. 56. At 9:30 a.m., Wilson decided to get some fresh air just outside his room. *Id.* His friends Kenny Gray (“Gray”) and “Tony D.” joined him. R. 45.

**9:45 a.m.—Defendant makes unprompted threats to Wilson.** At 9:45 a.m., Wilson was sitting outside with his friends when Defendant (wearing a hoodie in the dead of summer) and his brother walked by them. R. 45, 57. Defendant abruptly announced, “This will be my turf soon.” R. 45, 57. When Wilson asked if the threat was for him, Defendant answered affirmatively, cautioning, “...just [you] wait.” R 46, 57.

Defendant and his brother left the motel complex thereafter. R 57, 79.

**10:30 a.m.—Defendant returned, ready to clean up the streets of Stetson.** WhenDefendant and his brother returned to the Boals Motel, Defendant became agitated at the sight of Wilson. Greg encouraged him to “let it go,” as Wilson sitting outside was not out of the ordinary. R. 33. In spite of this, Defendant drew his hoodie tight around his face, masking his identity. R. 19-20, 58; Ex. 8.[[1]](#footnote-2) Defendant was walking fast, his right hand stuffed into the front pocket of his sweatshirt. R. 47, 58; Ex. 8. Unbeknownst to Wilson, Defendant was carrying a large .40 caliber handgun in his pocket. R. 21, 58. Defendant never told anyone he was armed and admitted he did not openly bear or display his firearm. R. 21.

Security camera footage from the scene shows Defendant turning to speak to Wilson. Ex. 8. According to Defendant himself, he used his free left hand to make the shape of a gun and said, “Pop pop—you’re done,” to Wilson. R. 21. Wilson gave no response, instead giving a quizzical shrug. Ex. 8, R. 57. At this point, Wilson still did not think that Defendant was armed, because he “honestly didn’t believe this kid was gonna [sic] be stupid enough to pull a gun on [him] in broad daylight.” R. 57.

But as Defendant slowly removed his hood, he made a fist with thumb out and slid his thumb across his neck. R. 59; *see also* Ex. 8 (showing Defendant’s left hand by his hood). Only then did Wilson understand that Defendant was about to kill him. R. 57.

In a panic, Wilson’s friend Tony D. gave him a small pistol for self-defense. R. 60. Wilson cautiously peered around the corner to track his hunter. *Id.*

**Seconds later—Defendant shoots first and does not stop until Wilson is in critical condition.** When Wilson turned the corner, Defendant was already comfortably in shooting position. Ex. 8. Without seeing the gun in Wilson’s hand, Defendant immediately fired and shot Wilson in the chest. Ex. 8; R. 23, 60. Wilson turned to flee, firing a return shot in self-defense. R. 60-61. As Wilson ran to safety (“like a little coward,” as Greg later described), Defendant shot Wilson again in the back. R. 36, 48, 61.

Finally, when Wilson lay on the ground in critical condition, Defendant and his brother grabbed both guns and fled the scene. R. 37, 50; Ex. 10 (noting that Wilson had severe blood loss and was “status critical”).

ARGUMENT

Under Stetson law, a person only has the right to use deadly force “if the person using or threatening to use deadly force ***is not engaged in criminal activity***, is in a place where he or she has a right to be, and ***is not the aggressor***.” Stetson Stat. § 776.012 (2022) (emphasis added). Defendant’s motion to dismiss should be denied because he illegally concealed his firearm, and because he did not shoot Wilson in any justifiable form of self-defense.

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1. DEFENDANT IS NOT ENTITLED TO STAND YOUR GROUND IMMUNITY BECAUSE HE ILLEGALLY CARRIED A CONCEALED WEAPON.

In Stetson, a defendant is notjustified in using or threatening to use deadly force if he is engaged in criminal activity at the time the threat or use of force occurred, which is exactly the case here. Stetson Stat. § 776.012. Defendant violated Stetson Stat. § 790.01(2) on August 6, 2022, when he carried a .40 caliber semiautomatic handgun in his sweatshirt pocket in a manner designed to conceal the weapon, so he could gain the upper hand on his enemy Wilson.

Across various jurisdictions, courts have consistently treated carrying a concealed weapon as a general intent crime. *People v. Rubalcava*, 23 Cal. 4th 322, 328 (2000). Courts have also almost universally agreed that a is concealed when it is hidden from the ordinary sight of casual observers. *Ensor v. State*, 403 So. 2d 349, 354 (Fla. 1981); *People v. Williams*, 39 Ill.App.3d 129 (1976); *Driggers v. State*, 123 Ala. 46, 49 (1899).

This Court should read Stetson’s concealed carry statute consistently with the majority of courts and deny Defendant’s motion because he illegally concealed a firearm on his person.

1. Defendant intentionally concealed his weapon because he planned to kill Ryan Wilson.

Defendant’s conduct on August 6, 2022, was an impermissible assault on both Ryan Wilson and the Second Amendment. Stetson Stat. § 790.01(2) requires that a firearm be carried “in a manner *designed* to conceal” the existence of the weapon. Stetson Stat. § 790.01(2) (2022) (emphasis added). Concealed carry is a general intent crime and therefore intent is presumed “based on the doing of the prohibited acts, without more.” *State v. Baych,* 169 N.W.2d 578, 580 (Iowa 1969).In the absence of specific language in Stetson Stat. § 790.01(2) requiring an intent to achieve anything beyond concealing a weapon, this Court should presume the legislature intended to criminalize the proscribed act itself, without further proof related to the defendant's subjective desires. *State v. Neuzil*, 589 N.W.2d 708, 709 (Iowa 1999). Defendant’s conduct clearly shows his intent to conceal his weapon so he could shoot his perceived rival.

Defendant claims, “It wasn’t like I was trying to hide [my gun] from [Ryan Wilson].” R. 21; 67-68. Yet at every opportunity, Defendant declined to communicate to Wilson he was armed in a safe and reasonable manner. Defendant could have simply said that he had a gun or removed the gun from his pocket, but he did not.

Instead, Defendant slid his left thumb across his neck in a clear attempt to intimidate Wilson. R. 21; 73-74. He told Wilson, “Pop pop – you’re done.” R. 21; 75. This was all part of Defendant’s carefully constructed scheme to threaten Wilson without exposing himself to the danger that comes with narcotics distribution. These threats were intentionally vague to prevent Wilson from learning about the specific danger he was in. Defendant choice to keep his firearm hidden away in his pocket as he walked by two unsuspecting victims is far removed from any lawful exercise of the Second Amendment, as the Ninth Circuit concluded that the Second Amendment, “simply does not extend to the carrying of concealed firearms in public*.*” *Peruta v. Cnty. of San Diego,* 824 F.3d 919 (9th Cir. 2016). Defendant is attempting to blur the line between concealed and open carry in order to commit violent crimes and grow his ill-gotten gains. *District of Columbia v. Heller,* 554 U.S. 570, 635 (2008) (holding that the Second Amendment right is not unlimited and that concealed weapons prohibitions have been consistently upheld). Granting Defendant’s motion would only serve to obfuscate the law on firearm possession and make life more difficult for Stetson’s citizenry and law enforcement.

If Defendant was openly displaying his firearm in accordance with his rights, there should be no doubt in the minds of any casual observer that Defendant was armed. However, not one witness was able to identify the object in his pocket as a firearm before the shooting started. The doubt in their minds was Defendant’s plot made manifest. This manufactured uncertainty gave Defendant time to walk past Wilson and gain the advantage before he started shooting.Even if the vague imprint of the firearm was visible through the oversized hoodie, the firearm was not visible through ordinary inspection— the victim and third parties had mere moments to speculate as to what was in the pocket.

Wilson’s suspicions about Defendant’s imminent plans do not support the assertion that Defendant was visibly armed. They are based on Wilson’s observations, which do not include seeing the gun before it was drawn and fired. The testimony of both Wilson and Gray show that Defendant returned to the Boals Motel after breakfast ready to start a fight. Defendant thought he could provoke Wilson into a fight, and incorrectly assumed his hidden firearm was an ace up his sleeve. Defendant intended to intimidate Wilson with his firearm to eliminate his narcotics trafficking competition. He used the fact that his firearm was obscured from sight to sow doubt and fear into Wilson’s mind, enough that Wilson was surprised by the initial bullet that struck him despite Wilson watching Defendant pretend to walk away. Accordingly, this Court should find that Defendant was illegally concealing a firearm—a crime within the exclusionary language of Section 776.012.

1. Defendant’s weapon was objectively out of “ordinary sight.”

In Stetson, a “concealed firearm” is “any firearm which is carried on or about a person in a manner designed to conceal the existence of the firearm from the ordinary sight or knowledge of another person.” Stetson Stat. § 790.01(2). The “ordinary sight” language is consistent with a majority of jurisdictions. *See, e.g.,* Florida Stat. § 790.01(2) (2022); *Montoya-Martinez v. State*, 337 So.3d 83, 85-86 (Fla. 3d DCA 2021) (describing “concealed firearm” under Florida Stat. § 790.001(2) as “any firearm…which is carried on or about a person in such a manner as to conceal the weapon from the ordinary sight of another person.”).

Accordingly, a weapon being out of “ordinary sight” is a low bar. Almost universally, states have held that absolute invisibility of a weapon is *not* required. *See Ensor v. State*, 403 So.2d 349, 353-354 (Fla. 1981); *but see Dorelus v. State*, 747 So.2d 368, 371 (Fla. 1999) (creating distinct “ordinary sight” factors for police officers inspecting vehicles). For example, in Michigan, courts have repeatedly affirmed a concealed carry conviction when a weapon was found at least partially covered by a defendant’s clothing. *See, e.g., People v. Clark*, 21 Mich.App. 712 (1970) (holding a pistol was concealed when it was in defendant’s pocket and an officer could only see it after the pocket came open); *People v. Iacopelli*, 30 Mich.App. 105 (1971) (upholding a conviction where defendant placed a gun in his coat after having it in plain sight.); *People v. Jackson*, 43 Mich.App. 569 (1972) (upholding a conviction where the defendant’s revolver could not be readily seen from the waistband of his trousers).

In *Driggers v. State*, the Alabama Supreme Court found an illegal concealed carry where “the pistol was in the defendant's right side pants pocket in front.” *Driggers v. State*, 123 Ala. 46, 50 (1898). The court distinguished the defendant’s conduct from a lawful carry scenario, where a person’s pistol is visible to someone passing them on the street or during ordinary social contact. *Id.*

Similar to *Driggers*, Defendant’s pistol was in his sweatshirt pocket. He was walking by Wilson in an open walkway on a bright summer morning. Neither Wilson nor Gray saw Defendant’s gun during the initial exchange of threats. When Defendant returned, Wilson still did not know Defendant had a gun. Warily watching Defendant approach, Wilson thought Defendant was merely holding a cell phone in his pocket. While the witnesses did see an object in Defendant’s hand, they could not confirm what it was. Even hypervigilant witnesses could not discern the object in Wilson’s pocket, showing that Wilson’s firearm was indeed concealed from ordinary sight and knowledge of others.

Consequently, Defendant’s firearm was objectively invisible to onlookers, and he was indeed engaged in criminal activity in violation of § 790.01(2).

1. DEFENDANT IS NOT ENTITLED TO STAND YOUR GROUND IMMUNITY BECAUSE HE INSTIGATED THE SHOOTOUT AND NEVER SOUGHT CEASEFIRE.

At its core, Stand Your Ground is a “law of proportion as well as a law of necessity.” *Allen v. U.S.*, 164 U.S. 492, 497 (1896). Under Stetson law, a person may justifiably use or threaten to use deadly force when reasonably necessary to prevent imminent harm or prevent a forcible felony. Stetson Stat. § 776.012 (2022). However, such action is generally not justified where that person was committing a forcible felony at the time or was the initial aggressor. Stetson Stat. §§ 776.012, 776.041 (2022). If the individual is found to be the instigator of the hostility, the individual can revive their right to self-defense through only two narrow exceptions. Stetson Stat. § 776.041 (2022). If the Court finds that the defendant did act in self-defense, he or she is immune from prosecution. § 776.032.

The Court must *deny* the Defendant’s motion to dismiss because he fails to make a *prima facie* case for self-defense, and in the alternative, clear and convincing evidence shows that Defendant did not act in self-defense. As such, any assertion that Defendant was acting to prevent a forcible felony must fail. Additionally, Defendant was the initial aggressor on August 6, thereby barring his right to self-defense immunity. Finally, Defendant cannot revive his right to self-defense because he fails to meet either of the § 776.041 exceptions.

1. Defendant Was the Initial Aggressor in His Attempt to Murder Wilson.

A person is the initial aggressor in an altercation if they “aggressively and willingly” began a physical fight without sufficient provocation. *State v. Hicks*, 385 N.C. 52, 60 (2023); *Drennen v. State*, 311 P.3d 116, 125 (Wyo. 2013). Another’s verbal threats or holding a weapon is insufficient provocation. *E.g., Drennen*, 311 P.3d at 128 (holding that the “general rule” nationwide is that verbal threats are insufficient to justify assault); *State v. Dukes*, 59 Kan.App.2d 367, 377 (2021) (finding defensive display of a weapon as insufficient provocation).Additionally, shooting someone in the back is strong evidence that that shooter was the aggressor. *Hicks*, 385 N.C. at 60.

In *U.S. v. McCants*, a disagreement between two men devolved into a series of fights, threats, and gun-brandishing. *U.S. v. McCants*, No. 22-14287, slip op. at 2 (11th Cir. 2024). The defendant was at a gas station when he saw his rival’s car approach. *Id.* To settle the score, the defendant grabbed a gun and walked toward the rival’s car. *Id.* A shootout ensued. *Id.* The Eleventh Circuit affirmed that the defendant was the initial aggressor in that incident. *Id.* at 3. After all, “this was not the ‘wild west.’” *Id.*

The evidence here goes even further. Just like the defendant in *McCants*, Defendant had a longstanding vendetta against Wilson and sought to settle the score. Like *McCants*,Defendant decided to take justice into his own hands. Hooded up to hide his identity, hand firmly on the gun hidden in his sweatshirt, Defendant approached Wilson. Although his brother tried to calm him down, Defendant still took it upon himself to threaten Wilson: “Pop pop−you’re done.” R. 47.

Defendant continually made his distaste for Wilson known: tracking Wilson’s activity, warning Wilson that Defendant would take over “his turf” one day. Typically, Wilson saw Defendant as a non-threat, laughing off Defendant’s “threats.” But Defendant’s specific death threats that day made Wilson apprehensive.

Surveillance footage shows Defendant comfortably in shooting stance before Wilson even turned the corner. *See* Ex. 8. In less than a second, Defendant got a clear shot into Wilson’s chest. As Wilson ran for his life, Defendant shot him again in the back.

Defendant was the initial aggressor in this case. Even if Wilson had told Defendant that this was “his turf” or to “keep walking” as Defendant alleges, these verbal threats are not enough to provocation as a matter of law. R. 29; 38. As in *McCants*,Defendant leapt at the opportunity for a “wild west” standoff against his enemy Wilson. The evidence shows that Defendant needed little to no provocation to “clean the streets” of Stetson that day. Accordingly, Defendant is *not* entitled to immunity under § 776.012.

1. Defendant’s Unrelenting Brutality Before and After Shooting Wilson Bars Defendant from Claiming Self-Defense.

An initial aggressor can revive his right to self-defense under two narrow exceptions. First, an initial aggressor may revive his right to self-defense if the use of force was reasonable in context and no alternative was available. Stetson Stat. § 776.041(2)(a). Alternatively, the right to self-defense may be revived if the aggressor clearly withdrew from the fight, but the victim refused to cease fire. Stetson Stat. § 776.041(2)(b).

Like most jurisdictions, the State of Stetson disfavors initial aggressors claiming self-defense. *Compare* Stetson Stat. §776.041(2) (requiring an initial aggressor to either retreat before using force or withdraw and communicate such) *and* Stetson Stat. §776.012 (requiring neither of a non-aggressor). Courts are generally apathetic to the aggressor’s plight. In a society of law and order we want wrongdoers to “abide by the consequences” of their own actions. *Bellcourt v. State*, 390 N.W.2d 269, 272 (Minn. 1986) (quoting *State v. Humphreus*, 270 N.W.2d 457, 462 (Iowa 1978)).

Here, facing injury was a consequence of Defendant’s own actions. Defendant failed to reasonably assess the danger of his situation and failed to seek peace before or after gunning down Wilson. As such, Defendant cannot revive his right to self-defense under either of the § 776.041 exceptions.

1. Defendant cannot revive his right to self-defense because he made no attempt to seek peace before shooting Wilson.

To revive the right to self-defense under the retreat exception, the initial aggressor must have (1) reasonably believed that he was in imminent danger of death or great bodily harm and (2) exhausted *all* reasonable means of escape other before resorting to force or threatened use of force. Stetson Stat. § 776.041(2)(a).

Attempted murder is an irrational response to vague taunting (which the evidence does not necessarily confirm). Additionally, Defendant resorted to violence without attempting de-escalation. Defendant cannot claim self-defense under the retreat exception.

1. Defendant did not reasonably believe he was in imminent danger of harm when Wilson merely stood outside his motel room.

In jurisdictions with similar initial aggressor statutes, a reasonable belief of imminent bodily harm exists where the “appearance of danger was so real that a reasonably cautious and prudent person under the same circumstances would have believed that the danger could be avoided only through the use of deadly force.” *Viera v. State*, 163 So.3d 602, 605 (Fla. Ct. App. 2015) (internal citations omitted). Mere fear that the victim has a gun—without actually seeing one—is insufficient to show that reasonable belief exists. *U.S. v. Jones*, 492 F.Supp.3d 1200, 1253 (D.N.M. 2020).

Defendant admits that he did not see Wilson holding a weapon as he walked toward the breezeway. Contrary to Defendant’s testimony, surveillance footage shows that when Wilson grabbed a gun thereafter, it was held behind a wall out of Defendant’s line of vision. *See* Ex. 8. A reasonable person would not shoot a supposedly unarmed man simply looking into a hallway. *See U.S. v. Greer*, 57 F.4th 626, 630 (8th Cir. 2023) (rejecting self-defense where defendant shot a man because he “knew something was about to go down” based on the man’s behavior).

Defense may argue that Wilson’s reputation should be considered. But Defendant escalated to violence *because* of his reputation: Defendant wanted to be the man who vanquished “king of the streets,” Wilson. *Cf. McCants*, No. 22-14287, slip op. at 2.Greg allegedly told him to “let it go” and ignore Wilson’s alleged taunting. R. 33. Defendant refused. Defendant was “sick” of Wilson, saw himself as “invincible,” and then got into shooting stance before Wilson had even entered Defendant’s line of sight. R. 20, 31; Exhibit 8.

Defendant had no reasonable belief of an imminent attack warranting deadly force, regardless of whether he was the initial aggressor. As such, Defendant fails to satisfy the first element of the retreat exception.

1. Defendant did not exhaust any of the obvious means of escape, much less all of them.

In *Allen v. U.S.*, the Supreme Court held that an individual has a duty to retreat before resorting to deadly force. *Allen*, 164 U.S. at 497. Although not required of non-initial aggressors, the State of Stetson requires initial aggressors to attempt every available means of escape first to revive their right to self-defense. Stetson Stat. § 776.041(2)(a).

In *Commonwealth of Pa. v. Collazo*, an argument broke out between two men in the middle of an apple orchard. *Collazo*, 407 Pa. at 495. A man punched the defendant in the face, and the defendant responded by stabbing that man in the heart. *Id.* at 496. The Pennsylvania Supreme Court found that because the defendant “had a whole orchard in which to escape” yet failed to do so, he could not claim self-defense. *Id.* at 503.

Like *Collazo*, Defendant had an entire motel complex in which to escape. No one blocked the Defendant in the breezeway. No guns were pointed at Defendant. He could have freely and easily walked down the hall or walked to the motel office. Instead, Defendant chose to draw his weapon and shoot. *Compare U.S. v. Jones*, 492 F.Supp.3d at 1253 (rejecting self-defense where instead of running away or entering a nearby public building, the defendant stabbed his opponent).

Because Defendant had no reasonable belief that he was in imminent danger and did not fulfill his duty to retreat before using deadly force, Defendant cannot assert a right to self-defense under § 776.041(2)(a).

1. Defendant cannot revive his right to self-defense because he neglected to seek peace after the fight began.

An initial aggressor may revive his right to self-defense if, during the hostilities, the aggressor in good faith (1) withdraws from physical contact with the other person, (2) clearly communicates to that other person that he intends to cease using force, and (3) the aggressor makes his withdrawal attempt while the other person remains a danger to him. Stetson Stat. § 776.041(2)(b).

Defendant cannot seek a self-defense instruction under this exception because in complete opposite to § 776.041(2)(b), Defendant did not seek ceasefire and continued shooting at Wilson as he was running from Defendant.

1. Defendant did not make a good faith effort to withdraw after initiating hostilities.

To qualify for the withdrawal exception, Defendant must take some good faith action to withdraw. Walking away or to a new location is insufficient to satisfy this element, as an aggressor may be moving farther to get a better position in the struggle. *E.g., State v. Isom*, 251 A.3d 1, 7-8 (R.I. 2021). Furthermore, intent to withdraw without physical action also fails to satisfy this element. *Id.* at 7.

In *People v. Jones*, a man entered a wrong apartment and hit a resident in the head. *People v. Jones*, 434 P.3d 760, 764 (Colo. Ct. App. 2018).As other residents joined in the fight, the man shuffled out of the apartment, his back against the wall. *Id.* at 764. The Colorado Court of Appeals held that though the man was the initial aggressor, a jury could reasonably infer that the man was withdrawing. *Id.* at 769.

Unlike *People v. Jones*, Defendant never attempted to withdraw and seek peace. Even though Defendant walked away from Wilson as he entered the breezeway, he kept his gun firmly in his hand. *See People v. Hernandez,* 111 Cal.App.4th 582, 590 (2003)(denying the withdrawal exception where the defendant walked away but still held a weapon in his hand). When hitting Wilson in the chest was not enough, Defendant shot Wilson again as he was running away. Defendant only stopped when Wilson was laying on the ground, inches away from death.

For these reasons, Defendant fails to satisfy the first element of the withdrawal exception.

1. Defendant did not communicate that he intended to withdraw after initial hostility.

In addition to attempting physical withdrawal, an initial aggressor must also clearly indicate (expressly or impliedly) that he is withdrawing from the hostility. *E.g., Hernandez*, 111 Cal.App.4th at 588. Clear communication means that a reasonable person would understand the aggressor’s message. *Id.* at 589. However, if the initial aggressor continues standing in front of the other person while harboring a gun, the aggressor is not reasonably communicating a “desire for peace.” *State v. Williams*, 815 S.W.2d 43, 48 (Mo. Ct. App. 1991); *State v. Diggs*, 219 Conn. 295, 300 (1991).

In no universe did Defendant reasonably communicate a desire for peace. Defendant did not tell Wilson that he wanted to stop fighting, Defendant did not leave the scene, and Defendant did not stop firing his gun until Wilson lay motionless on the ground. The entire attack was brief because Defendant made it brief: literally shooting a man when he was already down. Just as Wilson found a moment to retreat, Defendant could have found a moment to communicate a ceasefire. He did not do so.

As such, Defendant fails to satisfy the second element of the withdrawal exception.

1. Wilson tried to escape but Defendant refused to cease fire.

Finally, an initial aggressor must withdraw while his opponent continues to use or threatens to use force. Stetson Stat. § 776.041(2)(b). This final element makes logical sense: an initial aggressor cannot be acting in self-defense when his opponent has already withdrawn from the hostility and no longer poses an imminent threat. *See* Stetson Stat. § 776.012.

Again, Defendant did not seek peace, and certainly not in the face of danger. After Defendant shot Wilson once, Wilson immediately ran away. Defendant kept shooting like a rough-and-tumble vigilante until he thought the job was done.

Clearly, Defendant fails the third element of the withdrawal defense and cannot seek immunity from prosecution on these grounds.

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CONCLUSION

Based on the foregoing, this Court should deny Defendant’s Motion to Dismiss and find that Defendant is not entitled to immunity under Stetson Stat. §§ 776.032 and 776.012 because he was engaged in criminal activity and was the aggressor in the underlying shooting.

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|  | Respectfully submitted,  /s/ Team 113  Attorneys for The People of Stetson |

1. When Detective Michelle Hernandez asked why Defendant was wearing a bulky hoodie with the hood up on a hot August day, Defendant unconvincingly stated, “Don’t want to get skin cancer.” R. 25. [↑](#footnote-ref-2)