**IN THE SUPERIOR COURT OF THE STATE OF STETSON**

**PINELLA COUNTY JUDICIAL DISTRICT**

STATE OF STETSON, )

)

Non-Movant-Prosecution ) CASE NO. 2024-CR-319

v. )

)

JAY CAMERON, )

)

Movant-Defense ) September 1, 2024

)

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

Pursuant to Stetson R. Crim. P. 3.190(c)(3), the State of Stetson submits this response to Defense’s motion to dismiss and, in support of it, states: Jay Cameron cannot claim Stand Your Ground immunity from criminal prosecution. Stetson Stat. §§ 776.012, 776.013.

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INTRODUCTION

This Court should deny Defense’s Motion to Dismiss based on Stetson’s Stand Your Ground statute. Jay Cameron (“Defendant”) is not immune from prosecution for his use of deadly force because he was engaged in unlawful activity at the time of the incident, namely, carrying a concealed weapon without a license, and is, therefore, not entitled to claim Stand Your Ground immunity.

Even if this Court finds the Defendant was not engaged in unlawful activity, he still cannot claim Stand Your Ground immunity because he was the initial aggressor, having provoked Ryan Wilson to use force.

As the initial aggressor, the Defendant lacked a reasonable fear of harm when he used force. Additionally, the Defendant did not take the opportunity to escape to his motel room on the same floor. The Defendant also failed to withdraw from physical contact after Ryan Wilson fell to the ground. Because the Defendant was the initial aggressor and did not escape or withdraw from conflict, the Defendant cannot claim Stand Your Ground immunity for his unlawful actions.

STATEMENT OF FACTS

**Turf War.** On August 6, 2022, the Defendant woke up at 9:00 A.M. in Room 1077 of the Boals Motel with an agenda. (J. Cameron Tr. 19:24). The Boals Motel is a known area for drug dealings and turf wars, and an area that the Defendant wanted to make his turf. (Wilson Tr. 57:63–67). The Defendant called his brother, Greg Cameron, to meet him at the motel for the purpose of having “strength in numbers.” (J. Cameron Tr. 19:25–26, 39). After Greg arrived, the two walked through the motel breezeway into the parking lot where they encountered Ryan Wilson, who was staying in Room 1045 at the motel. (J. Cameron Tr. 20:54; Ex. 4). Wilson is a self-described entrepreneur who works in multiple fields, including construction. (Wilson Tr. 56:39–40). As the Defendant passed Wilson, he said, “This will be my turf soon.” (Wilson Tr. 57:70). When Wilson asked if he was threatening him, the Defendant responded, “Hell yes–just wait.” (Gray Tr. 45:40–46:42).

**Hidden Gun.** The Defendant and his brother returned less than an hour later through the motel parking lot. (Wilson Tr. 58:98). Wilson, sitting outside with his friends Kenny Gray and Tony D., noticed the Defendant had his right hand stuffed into the front pocket of his sweatshirt, gripping a large object. (Wilson Tr. 58:104–06). Neither Wilson nor Kenny could discern what the object was, but the Defendant later admitted it was his .40 caliber pistol. (Wilson Tr. 58:108; Gray Tr. 46:67–68; J. Cameron Tr. 21:70–71). The Defendant concealed the firearm in his front pocket because other people were around. (J. Cameron Tr. 21:71–73). While walking through the lot, on the other side of several parked cars, the Defendant made a gesture with his left hand at Wilson. (J. Cameron Tr. 21:73–75). The Defendant claimed he formed the shape of a gun with his hand, pointed it in the air, and said, “Pop pop.” (J. Cameron Tr. 21:73-75). Wilson, on the other hand, said the Defendant dragged his thumb across his neck, making a throat-slashing gesture. (Wilson Tr. 60:135–37).

**Shots Fired.** Seeing the Defendant’s gesture and fearing for Wilson’s safety, Tony D. handed Wilson a gun to protect himself. (Wilson Tr. 60:142–48). As the Defendant continued into the breezeway, Wilson went to confirm that the Defendant had truly left. (Wilson Tr. 60:143–48). Before Wilson entered the breezeway, the Defendant quickly turned, drew his firearm, and aimed it at the breezeway opening where Wilson was. (Ex. 8). The Defendant shot Wilson in the upper-left chest, causing him to spin around and away from the Defendant. (G. Cameron Tr. 36:194–96). As Wilson spun around, he returned fire, striking the Defendant in the stomach. (J. Cameron Tr. 23:118–19; G. Cameron Tr. 36:195–96). Wilson attempted to run away but tripped and fell, dropping Tony D.’s weapon to catch himself. (Wilson Tr. 60:155–61:59). After Wilson fell and dropped his gun, the Defendant shot a second bullet into his back. (Wilson Tr. 61:162–63).

**Stashing the Guns.** The Defendant instructed his brother to steal the gun Wilson dropped before fleeing the scene. (G. Cameron Tr. 37:205–06). The two stashed the guns in the Defendant’s motel room. (G. Cameron Tr. 38:240–41). Doctors treated Wilson for two perforating gunshot wounds. (Ex. 10).

ARGUMENT

Stetson’s Stand Your Ground law grants immunity to individuals for the use, or threatened use, of deadly force when it was necessary to avoid an objectively reasonable fear of imminent death or great bodily harm. Stetson Stat. § 776.012. A person asserting the Stand Your Ground defense has no duty to retreat from the threat, and instead, may stand their ground and defend themselves with deadly force. *Id.* To claim immunity, the individual must meet certain criteria: they must (1) not be engaged in criminal activity; (2) be in a place where they have the right to be; and (3) not be the aggressor. *Id.* If a person provokes force against themselves, they may still be immune if they (1) had an objectively reasonable belief of imminent harm and exhausted all reasonable means of escaping the conflict or (2) attempted to withdraw from the conflict, but the threat continued. *Id.* § 776.041(2).

The Prosecution bears the burden of disproving this immunity by clear and convincing evidence, which means that it is highly and substantially more likely to be true than untrue that the Defendant does not meet at least one of the required criteria for Stand Your Ground immunity. *Colorado v. New Mexico*, 467 U.S. 310 (1984). For the reasons below, the Defendant does not meet any of the criteria for Stand Your Ground immunity.

1. The Defendant was engaged in criminal activity during the shooting on August 6, 2022—precluding him from Stand Your Ground immunity.

Under Stetson law, a “person who is not licensed to carry a concealed firearm and who carries a concealed firearm on or about his or her person commits a felony of the third degree.” Stetson Stat. § 790.01(2). 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.” *Id.*

* 1. The Defendant unlawfully concealed his firearm from the view and knowledge of other people.

Determining whether a firearm is concealed is often done from a third-person perspective. *See e.g.*, *Simpson v. United States AG*, 7 F.4th 1046, 1051 (11th Cir. 2021) (a concealed firearm is one carried in a manner that hides it from “the ordinary sight of another person.”) (quoting Fla. Stat. § 790.001(3)(a)); *People v. Webb*, 131 N.E.3d 93, 97 (Ill. 2019) (a concealed firearm is one “completely *or* *mostly* *concealed* from view of the public . . . .” (emphasis added)); *Summerlin v. State*, 673 S.E.2d 118, 120 (Ga. Ct. App. 2009) (holding that a revolver butt protruding from a car seat is concealed because it is not “fully exposed to view.”). The Court must consider the totality of the circumstances and inferences involved when determining whether the firearm was concealed. *State v. Yarn*, 63 So. 3d 82, 85 (Fla. Dist. Ct. App. 2011).

Additionally, the relative size of the firearm is immaterial for determining whether it was concealed. *See United States v. Powell*, 423 U.S. 87, 91 (1975). The U.S. Supreme Court has held that a 22-inch shotgun can be concealed. *Id.* A mere bulge in someone’s clothes is not enough for a firearm to be considered open to view. *See United States v. Tobin*, 17 C.M.A. 625, 630 (1968) (holding that a firearm was concealed where there was no evidence “that anybody could regard the ‘bulge’ under [the husband’s] shirt as a pistol until the weapon came into view.”).

Mere suspicion of a firearm is not knowledge that there is one. *See Am. Sur. Co. v. Pauly*, 170 U.S. 133, 145 (1898) (distinguishing knowledge from suspicion where bond provision required bank receiver to notify company of fraud when the receiver had *knowledge* of it). Although the Defendant’s firearm was a “large .40 caliber,” the Defendant took steps to conceal it underneath his hoodie in a manner that other people could only suspect what was inside. (J. Cameron Tr. 21:71). While both Wilson and Gray could tell the Defendant was holding something in his pocket, they could not discern what it was. (Wilson Tr. 58:108–10; Gray Tr. 47:67–68).

Additionally, the Defendant admits to having his firearm in the front pocket of his hoodie when he and his brother returned to the motel. (J. Cameron Tr. 21:70). Video surveillance shows the Defendant walking through the parking lot with his right hand inside his hoodie pocket. (Ex. 8). At no point can a viewer see any part of the firearm until the Defendant pulls it out to shoot Wilson. (Ex. 8). Even if a small portion of the firearm was visible—which it was not— “absolute invisibility to others is not required.” *Commonwealth v. Montgomery*, 234 A.3d 523, 536 (Pa. 2020). The Defendant admits he kept the firearm in his pocket because “[t]here were other people around[,]” and he did not “want to just go pointing a gun at someone[.]” (J. Cameron Tr. 21:71–73). Thus, the Defendant violated § 790.01(2) because he intended to, and did, conceal the firearm from the public’s view.

* 1. The Defendant’s actions were not sufficient to put bystanders on notice that he was carrying a weapon.

Concealed carry includes concealing a firearm from another person's knowledge. Stetson Stat. § 790.01(2). One of the primary purposes of prohibiting concealed carry without a license is to encourage those with a firearm to put others on notice that they are armed with deadly force. *Montgomery*, 234 A.3d at 536. This prevents innocent bystanders from having a “fatal disadvantage” because they do not know that the person they are interacting with, or could interact with, has a weapon. *Id.*

Vague gestures are insufficient to give a trained police officer reasonable suspicion that a person is armed—let alone affirmative knowledge to an untrained bystander. *Robinson v. United States*, 76 A.3d 329, 340 (D.C. 2013); *see also Commonwealth v. Sapp*, 317 A.3d 570 (Pa. Super. Ct. 2024) (reasoning that the victim’s knowledge of a concealed firearm differs from an officer’s knowledge because of their training and expertise). In *Robinson v. United States*, a police officer on the gun recovery unit of the department set out to do exactly what his title said—recover guns. 76 A.3d at 332. Using his extensive training in the police force, the officer examined peoples’ movements to determine if they have a weapon. *Id.* at 339. If, from these movements or other indicators, “a reasonably prudent [person] in the [same] circumstances would be warranted in the belief that his [or her] safety or that of others was in danger[,]” the officer may lawfully conduct a frisk for weapons. *Terry v. Ohio*, 392 U.S. 1, 27 (1968). “The officer need not be absolutely certain that the individual is armed.” *Id.*

The police officer stopped a man named Robinson in a high crime area and asked, “do you have a gun?” *Robinson v. United States*, 76 A.3d at 332*.* Robinson, who was wearing a large winter coat, “brought both of his hands up to his chest” and “moved them back and forth or side to side.” *Id.* at 333. Based on this movement and the officer’s experience, the officer believed Robinson had a firearm. *Id.* The officer frisked Robinson, which revealed a small handgun in his breast pocket. *Id.*

The D.C. Court of Appeals thoroughly analyzed Robinson’s hand gestures, which the hearing court identified as the “key factor” in its decision. *Id.* at 337. The appellate court reasoned that, although the gestures were open and obvious, “nothing about [them] reasonably signaled to the police that Mr. Robinson might be armed.” *Id*. The gestures did not signal a physical admission or concealment of a guilty fact. *Id.* at 338. Even though the movements were in response to the officer’s question of whether Robinson had a firearm, the court found that “they could not be reasonably perceived as an affirmative or inculpating nonverbal answer.” *Id.* The trained police officer would have had to speculate that the movements meant Robinson was armed, as opposed to vague gestures with many innocent explanations. *Id.* As such, the court found that vague gestures in response to a direct question of whether the man was armed were insufficient to create even a reasonable, articulable suspicion to a trained gun recovery officer. *Id.*

When comparing the facts in *Robinson v. United States* to the situation here, it is even less likely that Wilson had sufficient notice that the Defendant was armed based on his gestures. The police officer in *Robinson v. United States* had a lesser burden than the knowledge required here: a reasonable, articulable *suspicion*—which still did not exist. *Id.* at 340. For the Defendant to have sufficiently notified others he was armed, he would have had to make others aware to the extent they knew he had a firearm—not just a reasonable suspicion. *See* Stetson Stat. § 790.01(2) (using the word “knowledge”); *See also Am. Sur. Co.*, 170 U.S. at 145 (distinguishing knowledge from suspicion). Here, the Defendant claims he made a gun shape with his fingers and said, “Pop-pop.” (J. Cameron 21:73–75). However, Wilson saw the Defendant make a completely different gesture. (Wilson Tr. 60:135–37) (“his [sic] made a fist with his thumb out and made like a quick sliding motion with is [sic] thumb across his neck.”). Likewise, Kenny Gray only saw the Defendant “move his hand quickly” and did not see what the specific gesture was. (Gray Tr. 70–73). Additionally, when the Defendant made his gesture, there were cars in between him and Wilson obstructing observers’ view of the gesture. (J. Cameron Tr. 21:85).

Even if the Court believes the Defendant made a gun-like gesture with his fingers, this still would not have given sufficient notice that he was armed. Simply put, the Defendant made an unprompted, random, and vague gesture. (J. Cameron 21:73–75). Unlike the trained gun recovery officer in *Robinson v. United States*, Wilson had no experience analyzing movements or gestures to discern if someone had a weapon. 76 A.3d at 339. Courts consider this training and experience when determining if reasonable, articulable suspicion exists. *Terry*,392 U.S. at 27.

Given the low burden, the officer’s extensive experience in identifying concealed weapons, and the timing of the gestures after asking about a gun, the court in *Robinson v. United States* still found the officer lacked a reasonable, articulable suspicion that Robinson was armed. *Id.* at 340. Thus, this Court cannot find that Wilson *knew* the Defendant was armed when he had no formal training or experience on uncovering concealed firearms, the Defendant made the vague gesture and unprompted comment as he was passing by, and the cars in the parking lot obstructed Wilson’s view of the gesture. (J. Cameron 21:73–85). For these reasons, the Defendant failed to amply notify observers that he was armed, and therefore, was engaged in the criminal activity of carrying a concealed weapon without a license.

Since the Defendant was committing a crime at the time of the incident, he is not entitled to Stand Your Ground immunity. *See* Stetson Stat. § 776.012. However, if this Court finds that the Defendant’s gesture was sufficient to put others on notice that he had a firearm, that same finding should prohibit this Court from granting immunity because it means the Defendant was the aggressor. *Id.*

1. The Defendant forfeited his claim to Stand Your Ground immunity because he was the initial aggressor.

Under Stetson Statute § 776.041(2), a person who provokes the use or threatened use of force against themselves forfeits Stand Your Ground immunity. However, certain “safe harbor” exceptions exist, allowing an aggressor to still claim immunity. Stetson Stat. § 776.041(2)(a)–(b); *State v. Phillips*, 479 P.3d 176, 194 (Kan. 2021). If an aggressor reasonably believes they are in danger of imminent death or great bodily harm and have exhausted all reasonable means of escaping, they may still claim Stand Your Ground immunity.Stetson Stat. § 776.041(2)(a). Alternatively, an aggressor may claim immunity if they, in good faith, attempt to withdraw from the conflict but the threat of force persists. *Id.* § 776.041(2)(b).

* 1. The Defendant provoked Ryan Wilson to use force against him.

Whether a person provokes another to use force is evaluated within the totality of the circumstances. *See, e.g.*, *Phillips*, 479 P.3d. at 194–95 (finding inflammatory Facebook messages to the victim “support a reasonable inference that [the defendant] was trying to provoke [the victim] to violence.”). Some courts utilize an objective standard, asking whether “a person of ordinary prudence and caution could conscientiously entertain a reasonable belief” that a defendant provoked another’s use of force. *Id.* at 195. Directing violent threats, gestures, or conduct at a person can make them the aggressor. *State v. Jones*, 128 A.3d 431, 451 (Conn. 2015). “The initial aggressor can be the first person who threatened to use physical force or even the first person who *appeared* to threaten the imminent use of physical force . . . .” *Id.* at 451 (emphasis added).

* + 1. The Defendant’s actions constituted a threat of deadly force.

Should this Court find that the gesture the Defendant claims to have made was sufficient to put others on notice that he was carrying a firearm, the Court must then find that the gesture constituted a threat of deadly force. The threat to use a firearm, even if never fired, constitutes a threat of deadly physical force sufficient to render someone an aggressor*.* *State v. Ireland*, 113 P.3d 1028, 1028-29 (Utah Ct. App. 2005). In *Ireland*, the defendant put his fingers inside of the right pocket of his coat with his elbow extended while robbing a jewelry store. *Id.* The court found that, even though he did not possess a firearm during the robbery, the finger pointing gesture alone was sufficient to constitute a threat of death or great bodily harm. *Id.* at 1030-31. Comparatively, in *People v. Brown*, the court ruled that brandishing the firearm alone, regardless of intent, made the defendant the aggressor. 125 N.E.3d 808, 813 (N.Y. 2019).

Here, the Defendant became the aggressor when he made a violent and threatening gesture towards Wilson. Wilson claims the Defendant dragged his thumb across his throat, while the Defendant claims he put his fingers in a gun shape and said, “Pop pop.” (Wilson Tr. 60:135–37; J. Cameron Tr. 21:73–75). The purpose of either one of the Defendant’s gestures is clear: to threaten Wilson with deadly force. The Defendant even admitted his intent was to threaten Wilson with deadly force. (J. Cameron Tr. 21:75-77) (“to let him know I was armed.”). If the Court finds the Defendant’s gesture was sufficient to notify others he was armed, it is reasonable to perceive these acts as a threat of deadly physical harm—much like the cashier in *Ireland* did in response to his finger pointing gesture—thus making the Defendant the aggressor, still precluding his immunity. 113 P.3d. at 1028–29.

* + 1. The Defendant provoked Ryan Wilson by shooting first.

While the question of who shot first is not solely dispositive, it is relevant to determining who the aggressor was. *See Freeze v. State*, 491 N.E.2d 202, 204-05 (Ind. 1986); *People v. Brown*, 952 N.E.2d 32, 42 (Ill. App. Ct. 2011) (reasoning that even though the defendant did not initiate the conflict, he shot first).

The motel video surveillance shows the Defendant turning, drawing his gun, and aiming it in the direction of Wilson before Wilson had even entered the breezeway. (Ex. 8). The Defendant then shot at Wilson, and Wilson returned fire. (Wilson Tr. 60:148–51). This is corroborated by Kenny Gray who, with a clear view of Wilson, saw the Defendant shoot before Wilson had. (Gray Tr. 47:87-88; Ex. 8C). No one used or threatened to use deadly force against the Defendant before this event. (Gray Tr. 47:79–81)*.* Absent a clear threat, the fact that the Defendant sparked the shootout is critical in making him the aggressor.

* 1. The Defendant did not have a reasonable fear of imminent harm, and he failed to exhaust all reasonable means of escape.

Under the first safe harbor exception, an aggressor can still claim immunity where they (1) reasonably believe that they are in imminent danger of death or great bodily harm and (2) have exhausted all reasonable means of escape. Stetson Gen. Stat. § 776.041(2)(a). Courts apply an objective, reasonable person standard to a defendant’s fear of imminent harm. *See State v. Quevedo*, 357 So. 3d 1249, 1253 (Fla. Dist. Ct. App. 2023) (finding a defendant had a reasonable fear of great bodily harm where the victim threatened to “bust his mouth and teeth”, knowing the defendant had a blood disease); *cf. People v. McGee*, No. 1-19-0192, 2021 LEXIS 730, at \*24–26 (Ill. App. Ct. May 4, 2021) (defendant’s fear was not reasonable while in a locked house and the alleged threat having left the premises). The court must analyze the totality of the circumstances surrounding the situation in determining whether the aggressor is entitled to immunity. *See Wyche v. State*, 170 So. 3d 898, 907–08 (Fla. Dist. Ct. App. 2015).

* + 1. The Defendant did not have a reasonable fear of imminent death or great bodily harm.

To claim a reasonable fear of imminent harm, the threat must be so real that a reasonably cautious person would believe using force was the only way to avoid harm. *Viera v. State*, 163 So. 3d 602, 605 (Fla. Dist. Ct. App. 2015). Furthermore, a defendant’s fear of harm can dissipate throughout a conflict. *See Robinson v. State*, 384 So. 3d 505, 513 (Miss. 2024)*.* In *Robinson v. State*, the defendant knocked her partner down during an argument in her trailer and stabbed him in the back with a knife, which broke the knife. *Id.* at 509. She then grabbed another knife from a different room and stabbed him once more in the chest, killing him. *Id*. The court held that the defendant could not claim self-defense because she continued to attack past the point of any reasonable fear of death or great bodily harm, as she had ample time to retrieve a second knife and continue the attack. *Id.* at 513.

Turning to the situation here, the Defendant did not reasonably believe that he was in imminent danger of death or great bodily harm before attacking. The Defendant claims he saw Wilson pull an object from his pocket but could not identify it; he merely assumed it was a firearm. (J. Cameron Tr. 22: 94–96). In reality, it was Wilson’s cell phone. (Wilson Tr. 57:85; Ex. 13). Wilson never pointed the phone at the Defendant in a manner suggesting it was a firearm. (J. Cameron Tr. 22:94). Perhaps, it was the Defendant’s own unlawful possession of a firearm that caused his alleged fear, which would be insufficient to qualify him for the exception as his subjective apprehension would not be objectively reasonable. *See Andersen v. United States*, 170 U.S. 481, 508 (1898) (where the defendant’s violation of the law on his part is the reason he expects an attack, the plea of self-defense cannot avail). As the Defendant entered the breezeway, he claims he heard a voice behind him yelling. (J. Cameron Tr. 22:109). However, the Defendant and his brother cannot agree on what exactly was said. (J. Cameron 23:110; G. Cameron Tr. 34:149). On the contrary, neither Wilson nor Gray heard anything, with Gray noting that the silence was so heavy that it was loud. (Wilson Tr. 61:168; Gray Tr. 48:93-95).

Despite having no indication that Wilson was armed, the Defendant drew his firearm and prepared to shoot before Wilson even came around the corner. (Ex. 8). The surveillance video shows the Defendant quickly turning to shoot Wilson, who was out of his view and clearly not an immediate threat. (Ex. 8). The Defendant had no basis to believe Wilson posed an imminent threat.

Additionally, after the Defendant shot Wilson in the shoulder, Wilson turned away from the Defendant—and attempted to flee. (Wilson Tr. 60:155–56). Even though the Defendant knew Wilson was unarmed, facing away from him, and fleeing, the Defendant fired another shot into Wilson’s back. (Wilson Tr. 60:155–61:63). The second shot—much like the defendant’s second stabbing in *Robinson v. State*—extended beyond any reasonable fear of harm. 384 So. 3d at 513. The evidence shows the Defendant had no reasonable fear of imminent harm, nor was there a threat so real that using force was the only way to avoid harm. Even if the Court finds the Defendant had reasonable fear of imminent harm, this fear subsided when Wilson fell and tried to flee. Therefore, the Defendant is unable to claim Stand Your Ground immunity.

* + 1. The Defendant failed to exhaust all reasonable means of escape.

In Florida, where the safe harbor exceptions are identical to the ones here, *see* Fla. Stat. § 776.041 *and* Stetson Stat. § 776.041, courts have held that a defendant exhausts all reasonable means of escape when they are trapped with no other accessible options besides the use of force. *Compare Smith v. State*, 387 So. 3d 495, 496–97 (Fla. Dist. Ct. App. 2024) (escape was exhausted where the defendant was trapped behind an inward-facing door), *with Wyche*,170 So. 3d at 908 (Fla. Dist. Ct. App. 2015) (holding that a jury could find all reasonable means of escape were not exhausted where the defendant retreated only to arm himself rather than avoid conflict).

Here, the Defendant did not exhaust all reasonable means of escape before using force. After entering the breezeway, the Defendant had two avenues to avoid the conflict: the stairwell on the left and the continuing breezeway. (Ex. 8). The Defendant was staying in a room on the first floor of the motel. (Ex. 4). Rather than using either of these routes to return to his room, the Defendant turned around, pulled out a gun, and fired before any threat of force was apparent. (Wilson Tr. 60:148-51). As such, all reasonable means of escape were not exhausted before the Defendant shot Wilson. Therefore, the Defendant cannot claim Stand Your Ground immunity. Stetson Stat. § 776.041(2)(a).

* 1. The Defendant never withdrew from contact in good faith.

The second safe harbor exception states that a defendant who is an initial aggressor can claim Stand Your Ground immunity if they clearly communicate an intention to withdraw, and attempts to withdraw, from physical contact, but the attack continues. Stetson Stat. § 776.041(2)(b)*.* As the force persists, an aggressor may defend themselves and claim Stand Your Ground immunity. *See State v. Berrios*, 203 A.3d 571, 606 (Conn. App. Ct. 2019) (an aggressor who did not clearly communicate an attempt to withdraw, regardless of intent, was precluded from immunity).

The Defendant neither communicated an intention to withdraw nor attempted to withdraw from contact with Wilson, despite having the opportunity to do so. After the Defendant shot Wilson in the shoulder, Wilson spun to his left, tried to run away, and fell and dropped the gun. (Wilson Tr. 60:155–61:62). The Defendant’s brother, watching the events unfold, admits that Wilson was trying to run away after the Defendant shot him. (G. Cameron Tr. 36:197–99). Instead of withdrawing, the Defendant shot Wilson again in the back. (Wilson Tr. 60:162–63). Any possible danger subsided after the Defendant shot Wilson the first time, yet he continued his attack by shooting Wilson a second time*.* At no point did the Defendant even attempt to withdraw from using force. Therefore, neither exception applies to the Defendant’s conduct, and since he was the aggressor, the Defendant is barred from claiming Stand Your Ground immunity.

CONCLUSION

For these reasons, this Court should deny the Defendant’s Motion to Dismiss for Stand Your Ground immunity. The Defendant was unlawfully carrying a concealed weapon at the time of the incident. Even if the gesture he made was sufficient to put others on notice he was armed, the Defendant nonetheless was the aggressor because the gesture would then constitute a threat of deadly force—deadly force which he used without a reasonable fear of imminent death or great bodily harm when he could have instead escaped or withdrew.

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| Dated: September 1, 2024 | Respectfully submitted, |
|  | /s/ Team 114   Attorneys for Non-Movant Prosecution |