TEAM NO. 116

Case No. 2024-CR-319



### IN THE

### SUPERIOR COURT OF THE STATE OF STETSON

### PINELLA COUNTY JUDICIAL DISTRICT



#### STATE OF STETSON

#### v.

#### JAY CAMERON

#### *Defendant*.



## MOVANT’S MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT’S MOTION TO DISMISS



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# INTRODUCTION

Defendant, Jay Cameron, (“Cameron”or “Defendant”), comes before the court charged with 1) Carrying a Concealed Weapon and 2) Attempted Murder in the Second Degree after the shooting of Ryan Wilson, (“Wilson” or the “Victim”). The Defendant hereby submits its Motion to Dismiss pursuant to Stet. Gen. Stat. § 776.032 as Defendant was acting in self-defense when he shot Wilson, thereby making him immune from criminal prosecution.

This Court should grant the Defendant’s Motion to Dismiss pursuant to Stetson’s Stand Your Ground statute because Defendant did not commit a forcible felony nor has Defendant lost his right to claim self-defense by acting as the initial aggressor.

# STATEMENT OF FACTS

August 6, 2022, started off as an ordinary day for 26-year-old Cameron. That morning, at around 9:00 a.m., Cameron woke up at the Boals Motel (the “Motel”) in Petersburg and decided to go get some breakfast. (Def.’s Police Interview 19:24-25.) Because Cameron does not have a permanent place to live, it is common for him to stay at the Motel from time to time. (*Id.* at 19:31-32.) According to Cameron, the Motel was a “good spot,” it was safe, clean and affordable. (*Id.* at 19:34-35.)

Before leaving to get breakfast, Cameron called his brother, Greg Cameron (“Greg”), to join him. (*Id.* at 19:25-26.) After Greg’s arrival, Cameron and Greg (the “brothers”) proceeded to breakfast, walking through the breezeway and into the Motel parking lot. (*Id.* at 19:26-27.) Upon entering the parking lot, the brothers encountered Wilson (*Id.* at 19:27-28.) It was this encounter with Wilson that changed the trajectory of their day from normal to anything but.

Wilson is a “violent drug-dealer who thinks he’s the king of these streets.” Wilson is known throughout the neighborhood for selling narcotics and for having a violent reputation. (*Id.* at 24:155-156.) According to Greg, “[e]veryone knows [Wilson] got a body count, but no one dares rat.” (Greg Cameron’s Police Interview 30:40-41.)

On the day of the incident, Wilson was also staying at the Motel, in the same Motel room from which the police seized contraband and other drug paraphernalia. Ex.7; Ex.4. According to Greg, that room, and the Motel in general, was “Wilson’s turf,” (Greg Cameron’s Police Interview Aff. 30:50-51), and “no one goes in or out of the Motel without Wilson knowing.” (*Id*. at 30:46-47.) In addition to calling the Motel “his turf,” Wilson solidified his control of the Motel by threatening everyone who stayed there. (Def.’s Police Interview 20:45-46.) According to Cameron, this went on for months. (*Id*.) Cameron, however, refused to be deterred by Wilson’s presence at the Motel, and on their way to breakfast that morning the brother walked through “Wilson’s turf” to reach their destination.

As the brothers passed Wilson, the drug-dealer turned to Cameron and told him to “[k]eep [his] distance or else[,]” to which Cameron replied, “I'm not scared of you.” (*Id*. at 20:54-55.) Used to people being fearful of him, Wilson was taken aback by Cameron’s display of courage. Consequently, he asked Cameron, “You talking to me?,” (*Id*. at 20:56), but Cameron refused to back down and responded, “Who else?” (*Id*.) Prideful and not used to having his “authority” challenged, Wilson resorted to what he is known for—violence. In response to Cameron’s sarcastic comment of, “Who else?” Wilson told Cameron “You’re a dead man walking.” (*Id*. at 57). Right then and there, Cameron knew death was around the corner and that he would have to defend himself if Wilson ever came at him. (*Id*. at 20:58.) To make good on his promise, after the brothers departed, Wilson went to his room to get his gun. (Officer Michelle Hernandez’s Incident Report ¶4; Kenny Gray’s Police Interview 46:53-61.)

After breakfast, the brothers started back to Cameron’s room the same way they came, (Def.’s Police Interview 20:61-62)—through the parking lot and towards the breezeway. Ex. 8. Despite 45 minutes having gone by, Wilson remained in the parking lot, (Def.’s Police Interview 20:61-62), except this time he was armed. (Officer Michelle Hernandez’s Incident Report ¶4; Kenny Gray’s Police Interview 46:53-61.) Upon seeing Wilson, Cameron realized that the only way to keep him away from him was to let him know he was armed. (Def.’s Police Interview 21:76-77.) Accordingly, he made the decision to let Wilson know he was armed and in an effort to tell him to stay away he uttered the words, “Pop Pop” while making his fingers into a gun shape. (*Id*. at 21:73-76.)

Despite Wilson’s statement of having seen Cameron slide his thumb across his neck, (Ryan Wilson Police Interview 59:133- 60:137), as stated by both Cameron and Wilson’s friend Kenny Gray who was also present, the only action Cameron took was to utter the words “Pop Pop.” (Def.’s Police Interview 21:76-77; Kenny Gray’s Police Interview 47:70.) However, this utterance was to no avail, because within seconds of Cameron giving this warning to Wilson, Wilson watched as Cameron entered the breezeway, removed his gun from his pocket, and pursued him in the alley. Ex. 8. Because Cameron’s back was turned he was unable to see Wilson creeping behind him. *Id*. Cameron did, however, hear someone scream something to the effect of “Yo watch, he’s a dead man.” (Def.’s Police Interview 23:110.) So, with death around the corner, Cameron drew his weapon and, soon after, the shoot out ensued. (*Id*. at 23:110-118.)

After Cameron drew his gun, Wilson shot at Cameron and Cameron shot back. (*Id*. at 23:114.) The two men exchanged shots back and forth, Cameron had been shot in the right side of the stomach and Wilson in his left shoulder area. (*Id*. at 23:118-120.) The bullet to the shoulder caused Wilson to turn. (*Id*. at 23:120-121.) However, while turning Wilson was still aiming the gun in his right hand at Cameron, so Cameron fired again. (*Id*. at 23:122-124.) By the time Wilson finished turning the bullet Cameron fired while Wilson was turning hit him in the back and Wilson fell. (*Id*. at 23:123-124.) The brothers then fled to get Cameron to the hospital. (*Id*. at 23:130-24:147.) However, to ensure that Wilson would not keep shooting at him as they left, Greg grabbed Wilson’s gun and they fled the scene. (*Id*. at 23:125-130.) Because the brothers had nothing to hide, they left both guns in Cameron’s Motel room. (*Id*. at 23:129-24:144.)

Now, Cameron has been accused of 1) Carrying a Concealed Weapon in violation of Stetson General Statutes § 790.01 and 2) Attempted Murder in the Second Degree in violation of Stetson General Statutes §§ 782.04 and 777.04. Per the court’s instruction at the Defendant’s Arraignment, Cameron has timely filed this Motion to Dismiss seeking to dismiss both counts.

# ARGUMENT

Where, as here, a person “reasonably believes that using or threatening to use [deadly] force is necessary to prevent imminent death or great bodily harm to himself or herself or another[,]” the force is justified, rendering the person immune from the State’s prosecution. Stet. Gen. Stat. § 776.012. The justified person in this instance is Jay Cameron, and under Stetson’s Stand Your Ground law, his immunity from prosecution holds firm against the State’s assertions of illegal concealment and alleged initial aggression. The State’s charges warrant dismissal at this stage because: (1) Mr. Cameron was not carrying a “concealed weapon” at the time of the shooting, and (2) Mr. Cameron was not the aggressor in this incident.

##### Mr. Cameron’s Firearm was Not “Concealed” for the Purposes of Stet. Gen. Stat. § 790.01(2).

Under section 790.01(2) of Stetson’s General Statutes, the State must prove that a person carrying a firearm did so “in a matter designed to conceal the existence of the firearm from the ordinary sight or knowledge of another person.” *Id.* The record contains no evidence of an attempt to conceal Mr. Cameron’s weapon. Quite opposite, the record evidences that Mr. Cameron’s intent was to disclose the fact that he was armed to Mr. Wilson. Without evidence to prove any such “design” to conceal, the State has not and cannot meet this burden.

To be “concealed” as a matter of law, Mr. Cameron’s firearm would have to be hidden from “the ordinary sight or knowledge of another person.” Not so here. The State is thus unable to satisfy two requirements of Stetson’s concealed carry statute: (1) intent to conceal, and (2) concealment as defined by the statute. As such, pre-trial dismissal is well-suited here.

###### Mr. Cameron Intended to Disclose, not Conceal, his Firearm.

In Stetson, the law places the high burden of proving that a person under prosecution carried a firearm “in a manner *designed* to conceal the existence of the firearm” on the State. Stet. Gen. Stat. § 790.01(2)(emphasis added). The issue thus turns on the manner in which the firearm is carried even more than whether it is concealed from the viewpoint of an observer. *See Dorelus v. State*, So. 2d 368, 371-72 (Fla. 1999).

A motion to dismiss a concealed carry charge should be granted when the manner in which a firearm is carried is not designed to conceal the weapon from the ordinary observer. *Id.* In the *Dorelus* case, Florida’s Supreme Court delved into what constitutes “such a *manner* as to be hidden from ordinary sight” as required by Florida’s concealed carry laws, which are strikingly similar to Stetson’s. *Id.* (emphasis in original). There, the defendant’s handgun was located in the console underneath his vehicle’s radio. *Id.* The court reasoned that, because there was no indication on the defendant’s part of an attempt to hide the presence of the firearm, the issue of concealment was fit for dismissal before reaching a jury. *Id.* at 373. In determining whether a firearm is concealed as a matter of law, courts give special attention to whether the defendant’s conduct in the moments surrounding the incident evidence an attempt to hide the existence of the firearm from their adversary. *See Id.*; *State v. Marsh*, 138 So. 3d 1087, 1090 (Fla. 4th DCA 2014) (reversing dismissal because of evidence that defendant was seen “crouching” and “hiding” from arresting officers); *State v. Teague*, 475 So. 2d 213, 214 (Fla. 1985) (affirming dismissal where defendant was concealed by his vehicle’s tinted windows but “unhesitatingly” opened his car door for arresting officer); *United States v. Patterson*, 2023 WL 4290051, No. 22-CR-20269 (E.D. Mich. June 30, 2023) (denying motion to suppress firearm because the defendant’s attempt to prevent the firearm in his pocket from swinging in his pocket and quick reflex to cover the pocket containing the firearm at sight of police supported reasonable suspicion). *See also State v. Hamdan*, 264 Wis. 2d 433 (Wi. 2003) (recognizing the contextual importance of high levels of crime in the neighborhood and the defendant’s prompt willingness to disclose the existence of his firearm to the police officers).

The law protects defendants like Mr. Cameron from concealed carry charges if the defendants did not carry a firearm in a manner designed to conceal it from their adversaries. *See* Stet. Stat. § 790.01(2); *Dorelus*, 747 So. 2d (collecting cases). As in *Dorelus*, the record contains no evidence that Mr. Cameron made any attempt to conceal the weapon from Mr. Wilson. The only fact that points to concealment is Mr. Cameron’s own statement that his firearm was located in his sweatshirt pocket. Again, as in *Dorelus*, which interprets a sister statute to Stetson’s, the record is void of any indication in Mr. Cameron’s communications or body language that he intended hide the fact that he was armed from Mr. Wilson. To the contrary, the factual scenario demonstrated by the record is in stark contrast to any allegation that Mr. Cameron’s manner of carrying the firearm was designed to conceal it from Mr. Wilson: the fact that he notified Mr. Wilson that he was armed both verbally and with a gesture is well corroborated evidence. Moreover, Mr. Cameron’s actions and statements made to law enforcement while still in distress evidence his innocence. Not only was he dutiful in providing Detective Hernandez with an interview while hospitalized and medicated for injuries sustained from Mr. Wilson’s bullets, but in that interview, Mr. Cameron candidly explained that his intent was to notify Mr. Wilson of the existence of his firearm to avoid violence.

###### Mr. Cameron’s Weapon was not “Concealed” as a Matter of Law.

Nationally, concealed carry laws are justified by the government’s duty to protect the public from persons with weapons taking advantage of unsuspecting citizens who have no way of knowing the person is armed. *See, i.e.*, *Dorelus*, So. 2d, at 370; *Smith v. State*, 96 Ala. 66, 67 (Ala. 1892); *People v. Mitchell*, 209 Cal.App.4th 1364, 1371 (Ca. 4th DCA 2012); *State v. Dixon*, 114 N.C. 850 (N.C. 1894), *Stockdale v. State*, 32 Ga. 225 (Ga. 1861). Concealed carry statutes must be strictly construed and applied only to the extent that they effectuate the legislature’s intent to protect unsuspecting citizens from weapons they had no notice of. *See State v. Blazovitch*, 88 W.Va 107 S.E. 291, 292 (Supreme Court of Appeals W.Va. 1921). In the same vein, “a conviction for carrying a concealed firearm cannot be sustained where circumstantial proof of concealment is not inconsistent with a reasonable hypothesis of innocence.” *Adams v. State*, 987 So. 2d 1255, 1256 (Fla. 5th DCA 2008).

Stet. Gen. Stat. section 790.01(2) requires a firearm to be hidden from the “ordinary sight or knowledge of another person” for that firearm to be considered “concealed.” *Id.* The phrase “‘ordinary sight of another person’” can be interpreted to mean “the casual and ordinary observation of another in the normal associations of life.” *Ensor v. State*, 403 So. 2d 349, 354 (Fla. 1981). Firearms that are not concealed from the ordinary observation of an individual standing near the person carrying are within the “ordinary sight of another person.” *Id.*, *Dorelus*, 747 So. 2d.; *U.S. v. Robson*, 391 F. Supp. 2d 383 (D. Md. 2005). Thus, even weapons covered by clothing are not concealed where, as here, observers had suspicions about the existence of the weapon. *People ex. rel. O.R.*, 220 P.3d 949 (Colo. App. 2008); *People v. Jones*, 12 Mich. App. 293 (1968).

Legislators all over the nation wrote concealed carry laws for the purpose of avoiding random acts of violence against unsuspecting members of the public. In Mr. Cameron and Mr. Wilson’s neighborhood, carrying a gun is the norm. Not a single witness here was unsuspecting. Rather, Mr. Wilson was a known violent offender. Still, Mr. Cameron took all necessary steps to avoid startling Mr. Wilson with his firearm, and to avoid the foreseeable violence that Mr. Wilson would soon initiate. As such, Mr. Cameron’s firearm was not “concealed” as required under Stetson’s concealed carry law.

##### Mr. Cameron is Entitled to Self-Defense Immunity Under Stet. Gen. Stat. § 776.032.

Under Stetson law, self-defense immunity is not afforded to an individual who “[i]nitially provokes the use or threatened use of force against himself or herself, unless: (a) Such force or threat of force is so great that the person reasonably believes that he or she is in imminent danger of death or great bodily harm and that he or she has exhausted every reasonable means to escape such danger other than the use or threatened use of force which is likely to cause death or great bodily harm to the assailant; or (b) in good faith, the person withdraws from physical contact with the assailant and indicates clearly to the assailant that he or she desires to withdraw and terminate the use or threatened use of force, but the assailant continues or resumes the use or threatened use of force.” Stet. Gen. Stat § 776.041(2)(a)-(b).

To provoke the use or threatened use of force against him or herself, or act as the initial aggressor, an individual must be “the first person who uses or threatens the **imminent** use of physical force in a given encounter.” *United States v. Campbell*, No. 21-CR-586 (JPO), 2022 U.S. Dist. LEXIS 233348, at \*3 (S.D.N.Y. Dec. 29, 2022) (emphasis added) (quoting *People v. Brown*, 33 N.Y.3d 316, 321, 102 N.Y.S.3d 143, 147, 125 N.E.3d 808, 812 (2019)).

In the case at bar, this court should grant Mr. Cameron’s Motion to Dismiss his charge for Attempted Second Degree Murder because (1) Wilson was the first individual to brandish his gun; (2) Mr. Cameron’s comment does not amount to imminent threat of physical force; and (3) Even if Mr. Cameron was the initial aggressor he withdrew and thereby regained his right to self-defense.

###### Because Mr. Wilson was the First to Brandish His Weapon, Mr. Wilson is the Initial Aggressor.

In determining the initial aggressor, courts have firmly established that brandishing a weapon is an imminent threat of force that makes an individual the initial aggressor. *See, e.g.*, *Campbell*, 2022 U.S. Dist. LEXIS 233348, at \*3; *People v. Barnard*, 208 Ill. App. 3d 342, 350, 567 N.E.2d 60, 66, 153 Ill. Dec. 345, 351 (1991) (affirming the judgment of the lower court convicting defendant of involuntary manslaughter and finding defendant to be the initial aggressor because he pointed a loaded gun at the victim); *People v. Ellis*, 107 Ill. App. 3d 603, 612, 437 N.E.2d 409, 416, 62 Ill. Dec. 882, 889 (1982) (“In fact, the defendant himself initiated the use of deadly force when he obtained the gun and subsequently fired a warning shot without any indication of violence on the part of the decedent.”); *State v. Buckley*, 2016 VT 59, ¶ 28, 202 Vt. 371, 386-87, 149 A.3d 928, 937 (“The threat to use deadly force by brandishing a deadly weapon has long been considered an assault. … Such a threat may give the threatened person a right to defend himself by the use of a deadly weapon. … [P]ermitting one to threaten to use deadly force leads in dangerous progression to an unacceptable conclusion.”) (alteration in original); *Brown*, 33 N.Y.3d 316, 322, 102 N.Y.S.3d 143, 148, 125 N.E.3d 808, 813.

In *Campbell*, for example, the court determined that the defendant who first brandished his gun was the initial aggressor because "the imminent threat to use a gun against another is, necessarily, a threat of deadly physical force[,] **[t]he first person to make such an imminent threat is, therefore, the initial aggressor with respect to deadly physical force.**" *Campbell*, 2022 U.S. Dist. LEXIS 233348, at \*3 (quoting *Brown*, 33 N.Y.3d at 322) (emphasis added).

Similarly in *Brown*, the court held that although the defendant had not pointed the gun at the victim, that defendant was the initial aggressor because “[he] placed his gun in a position where he was readily able to aim and fire it imminently, and did so before [the victim’s] efforts to ‘swipe’ at the gun.” *Brown*, 33 N.Y.3d at 322.

Here, as demonstrated by the video capturing the incident, before Cameron had even communicated anything to Wilson, Wilson was already reaching into his front right pocket to retrieve his gun. As Cameron recalls, “[i]t is like he was ready.” The law is clear that this conduct makes Wilson the initial aggressor, not the Defendant.

The fact that Wilson had not taken the gun out of his pocket until Cameron entered the breezeway is of no import. While Wilson may not have removed the gun from his pocket, like the defendant in *Brown*, Wilson had, nonetheless, put the gun in a position from which he was readily able to aim and fire it imminently. Accordingly, like the defendant in *Brown*, Wilson became the initial aggressor when he made his gun readily accessible to him.

###### Mr. Cameron was not the Initial Aggressor Because he had Merely Confronted Mr. Wilson and While His Comment was Potentially Aggressive, it was not Forceful.

In determining whether an individual has made a threat of imminent use of physical force that would preclude their claim to self defense the court looks to whether the individual engaged in a forceful action or procedure. *State v. Johnson*, No. SC-2023-0251, 2023 Ala. LEXIS 144, at \*11-12 (Ala. Dec. 15, 2023).

In *Johnson*, for example, the Supreme Court of Alabama granted a defendant’s motion for self-defense immunity after finding that the lower erred by finding defendant to be the initial aggressor merely because defendant confronted the victim about threatening his mother. *Id*. at \*11. More specifically, the court held that “[w]hile a person who starts an argument might be said to have behaved ‘aggressively’ in a loose sense of that word, the term carries a more precise meaning in criminal law.” *Id*. An initial aggressor is someone who engages in a “**forceful** action or procedure.” *Id*. (emphasis added) (citing *Gaines v. State*, 137 So. 3d 357, 361(Ala. Crim. App. 2013)). While the court does not expressly define a “forceful action,” it makes clear that it does not encompass someone who “simply ‘created [a] controversy’ or verbally confronted someone else.” *Id*. at \*12

In the case at bar, Mr. Cameron is not the initial aggressor because saying the words “Pop Pop” was not a forceful action or procedure, it was mere confrontation. On the day of the incident, earlier that morning, Wilson told Cameron that he was a “dead man walking.” Given Wilson’s violent reputation in the neighborhood, Cameron believed that Wilson would make good on his promise. With this belief in mind, the next time Cameron saw Wilson, which was only a few hours later, Cameron indicated that he was armed, for the purpose of warning Wilson to stay away. Accordingly, like in *Johnson* where the court held that the defendant confronting the victim about the victim's earlier threat did not make him the initial aggressor, the court must also find that Cameron confronting the victim about his earlier threat did not make him an initial aggressor.

Although the defendant in *Johnson* confronted the victim by inquiring whether the victim actually made the earlier threat and in our case Cameron confronted victim with the the words “Pop Pop,” the difference in phrasing is of little significance. If the court meant to limit the scope of confrontation it could have said that “confirming whether a threat was made did not make him the aggressor.” Instead, however, the court was more concerned with the fact that the defendant was confronting the victim about the victim’s earlier threat. Accordingly, since both the defendants in *Johnson* and in our case were confronting the victim about a threat that the victim made earlier, neither defendants should be considered the initial aggressor.

Moreover, while Wilson claims that Cameron slid his thumb across his neck while removing his hood, Wilson, unsurprisingly, is the only one who recounts this version of events. Not only does Cameron state that he only uttered the words “Pop Pop” and made a gun shape with his fingers, but adverse witness Kenny Gray, recounts the same version of events in his statement to police. However, even if this was the action taken by Cameron, a hand gesture is no more forceful action than the words, “Pop Pop.” Accordingly, if this conduct did occur, which the defense maintains it did not, this conduct would also fail to make him the initial aggressor.

###### Even if Mr. Cameron’s Comment Qualifies as a Threat, Mr. Cameron’s Threat was not Imminent, but was Contingent Upon Wilson Acting Violently Towards Him.

In determining whether an individual’s threat has made him an initial aggressor the court will assess whether the threat was imminent. *See, e.g*., *State v. Forbes*, 2003 ME 106, 830 A.2d 417, 2003 Me. LEXIS 115 (2003).

In *Forbes*, the court found that the trial court erred in determining that defendant was the initial aggressor because the threat he made was not imminent. More specifically, the court reasoned that although the defendant threatened the victim, the defendant's threat was not imminent, but contingent upon the victim causing further damage to his car with speed bumps. *Id*. at ¶15. Accordingly, because the threat was not one of imminence, but of contingency, the court determined that the defendant was not the initial aggressor. *Id*.

Comparable to the defendant in *Forbes*, Cameron had not made an imminent threat, but one that was contingent. As mentioned earlier, when Cameron saw Wilson he was of the impression that Wilson would fulfill his earlier threat of killing him. To keep Wilson away, Cameron said “Pop Pop.”

Accordingly, as a warning to stay away, Cameron’s use of the words “Pop Pop” was not an imminent threat, but a threat contingent upon Wilson attacking Cameron as he stated he would earlier that day. Accordingly, like the court in *Forbes*, who held that the defendant was not the initial aggressor because the threat was contingent upon further damage, the court here should similarly hold that Cameron was not the initial aggressor because his threat was contingent upon Wilson attempting to harm or kill Cameron as he said he would earlier that day.

###### Cameron was not the Initial Aggressor Because the Victim was Ignorant of the Provocation.

Even if the court finds that Cameron’s comment was an imminent threat, it has no bearing on the self-defense inquiry because Wilson could not be provoked by something he was ignorant of. *State v. Bristol*, 53 Wyo. 304, 319, 84 P.2d 757, 762 (1938) (“The deceased in this case did not know that the defendant was armed. Hence whatever bearing such arming might otherwise have on the case, it could not have any tendency to show that the defendant thereby provoked the deceased in attacking him, and this fact must, accordingly, be eliminated in the consideration of the immediate question before us.”).

Here, Wilson had not heard “Pop Pop.” Instead, as mentioned, Wilson claims that he was threatened by Cameron when Cameron slid his hood off and allegedly slid his thumb across his neck simultaneously, a version of events only he recounts.

Importantly, Wilson failed to mention Cameron’s utterance of the words “Pop Pop” in his statement to police because he had not heard it. Accordingly, because Wilson had not heard “Pop Pop,” nor seen the hand gesture, like the defendant in *Bristol* who had not seen the defendant armed, Wilson cannot viably argue that that conduct provoked him, making Cameron the initial aggressor.

###### In the Event that the Court Somehow Finds that Cameron's Comment and Gesture Made him the Initial Aggressor, Cameron Regained his Right to Assert Self Defense Because he Withdrew.

In Stetson, an initial aggressor may regain his right to claim self-defense if the individual, in good faith, withdraws from physical contact with the assailant and indicates clearly to the assailant that he or she desires to withdraw and terminate the use or threatened use of force, but the assailant continues or resumes the use or threatened use of force. Stet. Gen. Stat § 776.041(b).

An individual sufficiently withdraws and regains their right to self defense when they leave the scene. *See, e.g*., *State v. Stephens*, 275 N.C. App. 890, 900, 853 S.E.2d 488, 496 (2020).

In *Stephens*, the court held that the defendant regained his right to use force in self-defense because the defendant withdrew by walking toward his vehicle, clearly announcing his intent to withdraw by actually leaving. *Id*. Also part of the court’s analysis of whether the defendant regained his right was the fact that once the defendant effectively withdrew, it was the victim that resumed the use of deadly force. *Id*.

In this case, after commenting “Pop Pop,” Cameron walked away from Wilson and into the breezeway. It was Wilson who resumed the use of deadly force by pursuing Cameron into the ally with his gun along his side. Accordingly, like the court in *Stephens* who held that a defendant regained his right to self-defense after he retreated to his car and the victim resumed the deadly force, this court should grant Cameron’s Motion to Dismiss because he regained his right to self-defense once he entered into the breezeway and Wilson resumed deadly force when he pursued Wilson with his gun.

# CONCLUSION

For the foregoing reasons, the Defendant party respectfully requests that the Court honor his immunity from criminal prosecution and grant this Motion to Dismiss both charges.

Respectfully Submitted,

*/s/* Team 116

Attorneys for the Defendant