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| **IN THE SUPERIOR COURT OF THE STATE OF STETSON****COUNTY OF PINELLA** |
| Case No. 2024–CR–319 |
| STATE OF STETSON, *Prosecution,*v.JAY CAMERON, *Defendant*. |
| THE NON-MOVANT’S MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT’S MOTION TO DISMISS |

/s/ 119

Team 119

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TABLE OF CONTENTS

[TABLE OF AUTHORITIES iii](#_Toc176015047)

[INTRODUCTION 1](#_Toc176015048)

[STATEMENT OF FACTS 1](#_Toc176015049)

[ARGUMENT 4](#_Toc176015050)

[I. This Court should deny the Defendant’s Motion to Dismiss—Stand Your Ground immunity excludes those engaged in criminal activity, and the Defendant illegally concealed a handgun. 4](#_Toc176015051)

[A. Committing a third-degree felony constitutes criminal activity. 5](#_Toc176015052)

[B. The Defendant committed a third-degree felony under Stetson statute when he carried a concealed handgun without a license. 6](#_Toc176015053)

[1. The Defendant carried his pistol on or about his person. 6](#_Toc176015054)

[2. The Defendant carried his pistol in a manner designed to conceal its existence. 7](#_Toc176015055)

[C. Even if this Court chooses to expand SYG to criminals, the Defendant would not qualify because he never retreated. 8](#_Toc176015056)

[II. This Court should deny the Defendant’s Motion to Dismiss because he initiated aggression—he imagined a threat and responded with unnecessary, deadly force. 9](#_Toc176015057)

[A. The Defendant initiated aggression when he verbally and physically threatened Wilson. 10](#_Toc176015058)

[B. The Defendant only imagined imminent danger because no threat of force existed. 13](#_Toc176015059)

[1. Wilson never threatened the Defendant. 14](#_Toc176015060)

[2. The Defendant ignored multiple, reasonable escape routes. 16](#_Toc176015061)

[C. The Defendant did not withdraw from physical contact because he continued to shoot Wilson, the wounded and fleeing victim. 16](#_Toc176015062)

[CONCLUSION 17](#_Toc176015063)

# **TABLE OF AUTHORITIES**

Cases

*Commonwealth v.* *Mouzon*,

 53 A.3d 738 (Pa. 2012) 11, 14

*Dorelus v. State*,

 747 So. 2d 368 (Fla. 1988) 7

*Edwards v. Marshall*,

 No. 7:17-cv-00571-ACA-JHE, 2019 WL 4408447 (N.D. Ala. Apr. 23, 2019) 12

*Ensor v. State*,

 403 So. 2d 349 (Fla. 1981) 7

*Garcia v. State*,

 286 So. 3d 348 (Fla. Dist. Ct. App. 2019) 8, 9

*Howard v. State*,

 698 So. 2d 923 (Fla. Dist. Ct. App. 1997) 15

*Little v. State*,

 302 So. 3d 396 (Fla. Dist. Ct. App. 2020) 15

*Mojica v. Fischer*,

 No. 00 Civ. 8933RJHKNF, 2005 WL 2230450 (S.D.N.Y. Sept. 12, 2005) 10

*People v. Hinds*,

 No. 326923, 2016 WL 3317411 (Mich. Ct. App. June 14, 2016) 15

*People v. Santiago*,

 515 N.E.2d 228 (Ill. App. Ct. 1987) 10, 11

*People v. Tucker*,

 530 N.E.2d 1079 (Ill. App. Ct. 1988) 17

*Rodriguez v. Heath*,

 138 F. Supp. 3d 237 (E.D.N.Y. 2015) 11

*Rowe v. United States*,

 164 U.S. 546 (1896) 17

*State v. Chavers*,

 230 So. 3d 35 (Fla. Dist. Ct. App. 2017) 4, 5

*State v. Floyd*,

 186 So. 3d 1013 (Fla. 2016) 14

*State v. Joseph*,

 506 So. 2d 493 (Fla. Dist. Ct. App. 1987) 8

*State v. Kirkland*,

 276 So. 3d 994 (Fla. Dist. Ct. App. 2019) 5, 6

*State v. Marsh*,

 138 So. 3d 1087 (Fla. Dist. Ct. App. 2014) 7, 8

*State v. Valley*,

 381 So. 3d 633 (Fla. Dist. Ct. App. 2024) 6, 7

*United States v. McCants*,

 No. 22-14287, 2024 WL 507491 (11th Cir. Feb. 9, 2024) 12

*United States v. Peterson*,

 483 F.2d 1222 (D.C. Cir. 1973) 18

*United States v. Rice*,

 673 F.3d 537 (7th Cir. 2012) 11, 13

*United States v. Thompson*,

 No. 20-10373, 2023 WL 8015755 (11th Cir. Nov. 20, 2023) 6

*Verne v. Jones*,

 No. 3:15cv001-LC/CAS, 2017 WL 1190386 (N.D. Fla. Mar. 10, 2017) 14

Statutes

Fla. Stat. § 776.012 (2024) 5

Fla. Stat. § 790.001 (2024) 6

Stetson Stat. § 776.012 (2022) 4, 8, 9

Stetson Stat. § 776.041 (2022) 9, 10, 13, 15, 16

Stetson Stat. § 790.01(2) (2022) 5, 6, 7

# **INTRODUCTION**

Unclean hands cannot grasp immunity. Stand Your Ground immunity excludes criminal actors and first aggressors. Occupying just one of these categories bars immunity, yet the Defendant occupies both. The Defendant acted criminally by carrying a concealed firearm without a license, in violation of Stetson law. The Defendant initiated aggression by repeatedly threatening the victim with deadly force and firing the first shot in the conflict.

For these reasons, this Court should deny the Defendant’s Motion to Dismiss on both grounds.

# **STATEMENT OF FACTS**

**A turf war.** The Defendant Jay Cameron knew that Ryan Wilson, a locally known drug dealer, had been occupying a particular motel room for months—throwing parties, terrorizing the community. R. at 20:45–52, 45:25–29. In fact, the Defendant was sick of the “violent drug dealer” wreaking havoc. R. at 19:28–20:52. Nevertheless, on August 6, 2022, the Defendant chose to stay in the very motel Wilson occupied, claiming he selected the Boals Motel because it was “clean and safe.” R. at 19:29–20:46.

Around 9:00 a.m., the Defendant called his brother, Greg Cameron, inviting him to the motel. R. at 19:25–26. The two brothers encountered Wilson almost right away. R. at 19:26–28. The Defendant started criticizing Wilson for giving stingy cuts and boasting that Wilson’s turf would soon be his. R. at 57:66–70. According to Greg, the Defendant saw himself as the Robin Hood of the streets—an invincible warrior who stood for fairness and wealth equality. R. at 31:64–79.

Wilson stood up, offended by the Defendant’s challenge, yet let the Defendant walk past without incident. R. at 57:72–79. The Defendant and Greg left the motel to get breakfast together. R. at 20:61–62.

**Return to the battleground.** Nearly an hour later, Greg wanted to hang out downtown, but the Defendant insisted they return to his room at the motel first. R. at 20:62, 33:111–13. Despite the August heat, the Defendant wore his red hoodie scrunched up around his face, the drawstring tight. Ex. 8. His right hand remained intently buried in his hoodie pocket. R. at 58:104–06. He walked fast, several paces ahead of his brother—tense.Ex. 8. As he neared Wilson, the Defendant raised his hand, formed a gun with his fingers, and threatened, “Pop pop—you’re done.” R. at 21:71–76, 47:68–72. The Defendant did so specifically to let Wilson know he carried a gun. R. at 21:71–76. Wilson didn’t breathe a word in response. R. at 47:79–80. Once again, Wilson let the Defendant and his brother pass. R. at 21:80–81. Just before the Defendant entered the breezeway, he made one more threatening gesture at Wilson. R. at 60:138–39.

He pushed his hood back a bit, made a fist, and dragged one thumb ominously across his throat. R. at 59:131–60:139.

**The late morning shootout.** Around 10:30 a.m., the Defendant entered the motel breezeway. Ex. 8. Feeling threatened, Wilson tried to keep an eye on the Defendant. R. at 60:147–48. Wilson’s companion, Tony D., noticed the threatening behavior and handed Wilson a gun for protection. R. at 60:141–48. The Defendant did not see this exchange between Wilson and Tony but nevertheless states he saw something that was “obviously a black object” that he “assumed” was a gun. R. at 22:90–96.

Wilson proceeded, poking his head around the corner to keep an eye on the Defendant, only to be met with a blast of gunfire. R. at 60:147–51. The Defendant did not have a concealed carry license but pulled a massive, .40 caliber handgun from the front pocket of his oversized hoodie and squeezed a round straight into Wilson’s chest. R. at 21:70–71, 60:153–55. Wilson returned fire, grazing the Defendant, but the Defendant didn’t stop—he continued after Wilson. R. at 60:153. Bleeding, stumbling, Wilson tried to flee.R. at 60:155–61:159. The Defendant shot him again—this time in the back. R. at 60:153–61:163.

The Defendant instructed his brother to pick up Wilson’s gun from where it had clattered uselessly to the ground. R. at 23:129–30. The brothers left Wilson bleeding on the pavement and stashed the guns in the Defendant’s motel room, not realizing authorities would search the room.R. at 24:140–42. Greg drove the Defendant a whole county over for medical treatment. R. at 24:145–47. Neither brother paused to check on Wilson nor call paramedics on his behalf. R. at 37:205–08.

Warrants for the Defendant were issued. Formal charges filed. Despite all reasonable efforts, authorities were unable to locate the Defendant for nearly two years. R. at 4, 71.

# **ARGUMENT**

## **This Court should deny the Defendant’s Motion to Dismiss—Stand Your Ground immunity excludes those engaged in criminal activity, and the Defendant illegally concealed a handgun.**

Stand Your Ground (“SYG”) immunity protects those who *blamelessly* defend themselves with deadly force. *See* *State v. Chavers*, 230 So. 3d 35, 39 (Fla. Dist. Ct. App. 2017) (holding that a defendant who engaged in criminal activity when using deadly force is barred from SYG immunity). When a person occupies a place he has a right to be and does not engage in any illegal activity, SYG eliminates the common law duty to retreat. *Id.* Such a blameless person, who uses deadly force to defend himself from a reasonable threat, is then immune from criminal prosecution and civil liability alike. *Id.* at 37.

Stetson’s SYG statute states unequivocally that anyone engaged in “criminal activity” is not protected by the statute. Stetson Stat. § 776.012 (2022). A person who does not meet SYG requirements may still assert self-defense at trial. *Chavers*, 230 So. 3d at 38. At the pre-trial phase, prosecutors may overcome an immunity assertion by presenting clear and convincing evidence that a defendant engaged in illegal activity at the time of the incident. *Id.* at 38 n.1, 39.

The State does not dispute that the Defendant occupied a place he had a right to be at the time of the incident. He did, however, engage in criminal activity and is therefore barred from SYG immunity.

### Committing a third-degree felony constitutes criminal activity.

Although defendants in jurisdictions with similar SYG provisions have tried to assert that certain, low-level crimes do not constitute “criminal activity,” courts have, so far, resolved that issue on other grounds. *E.g.*, *id.* at 38. However, even if some insignificant crimes are excluded for the purposes of SYG eligibility, a felony offense is not one of them. Stetson Stat. § 790.01(2) (2022).

Stetson law provides that anyone who carries a concealed weapon without a license commits a third-degree felony. *Id.* The felony designation alone indicates a significant offense.

While there is no Stetson case law on point, the language of Stetson’s SYG law is identical to the corresponding Florida statute, making Florida a highly persuasive jurisdiction. Fla. Stat. § 776.012(2) (2024). In *State v. Kirkland*, 276 So. 3d 994, 997 (Fla. Dist. Ct. App. 2019), the Florida Fifth District Court of Appeal held that the lower court erred in granting a defendant SYG immunity when he carried a gun in violation of a Florida open carry statute—a second-degree misdemeanor. The court held that even a second-degree misdemeanor would constitute criminal activity. *Id.* Notably, the Eleventh Circuit relied on this analysis when it cited *Kirkland* for the proposition that violating firearm statutes fell within the definition of “criminal activity.” *United States v. Thompson*, No. 20-10373, 2023 WL 8015755, at \*27 (11th Cir. Nov. 20, 2023).

Because concealed carry without a license is a significant offense under Stetson statute, this Court should find that concealed carry without a license constitutes criminal activity.

### The Defendant committed a third-degree felony under Stetson statute when he carried a concealed handgun without a license.

The language of Stetson’s concealed carry statute implicates two requirements: (1) the weapon is carried “on or about a person,” and (2) the weapon is carried in a way “designed to conceal [its] existence” from the “ordinary sight or knowledge” of another. Stetson Stat. § 790.01(2) (2022). The Defendant in this case meets both criteria.

#### **The Defendant carried his pistol on or about his person.**

While no Stetson cases have yet interpreted the phrase “on or about,” Florida’s definition of concealed carry is, once again, similar, making Florida case law highly persuasive authority. *Id.*; Fla. Stat. § 790.001(3) (2024). In *State v. Valley*, 381 So. 3d 633, 634–35 (Fla. Dist. Ct. App. 2024), the Florida Second District Court of Appeal held that the lower court erred when it dismissed charges against a defendant who carried a firearm in a zipped, crossbody bag. Generally, the key consideration is whether the weapon is readily accessible to the bearer. *Ensor v. State*, 403 So. 2d 349, 353 (Fla. 1981) (interpreting a then-existing statute with language identical to Stetson Stat. § 790.01(2) (2022)), *superseded on other grounds by statute*, 1982 Fla. Laws 334.

In this case, the Defendant carried his pistol in the front pocket of his hoodie. The pistol remained easily accessible—not stored away behind a lid, zipper, or other protective barrier. Finally, the plain fact that the Defendant rapidly accessed his gun cannot be overstated. The Defendant shot Wilson. He had ready access to his firearm.

Therefore, this Court should find the Defendant carried his pistol on or about his person.

#### **The Defendant carried his pistol in a manner designed to conceal its existence.**

Whether a firearm is concealed is ultimately a matter of common sense. *Dorelus v. State*, 747 So. 2d 368, 372 (Fla. 1988) (holding that an uncovered weapon on a car’s center console was not concealed merely because the car had tinted windows). Factors such as size, manner of concealment, and the apparent efforts of the defendant to hide the weapon can all inform a conclusion that a firearm was concealed. *Id.* Even a partially visible weapon may be concealed if the evidence suggests the defendant intended to hide it. *State v. Marsh*, 138 So. 3d 1087, 1090–91 (Fla. Dist. Ct. App. 2014).

For instance, in *State v. Joseph*, 506 So. 2d 493, 494 (Fla. Dist. Ct. App. 1987), an officer spotted a bulge in a suspect’s back pocket with the grip of a firearm protruding. The appellate court held that the lower court erred by automatically dismissing the charge simply because the firearm was partially visible. *Id.*

In this case, no part of the gun was visible. The Defendant wore a loose, red hoodie; no bulge could be observed in his pocket. In fact, the Defendant himself admits to saying, “Pop pop,” to communicate to Wilson that he carried a gun. Additional subjective knowledge would be required for an ordinary person to understand the Defendant carried a gun, and—more importantly—the Defendant knew that. If a partially visible weapon may be considered concealed, then certainly a fully hidden pistol is concealed.

Therefore, this Court should find that the Defendant illegally concealed his weapon.

### Even if this Court chooses to expand SYG to criminals, the Defendant would not qualify because he never retreated.

The language of Stetson’s SYG statute is clear and unambiguous—if a defendant engages in criminal activity, he is barred from SYG immunity. Stetson Stat. § 776.012 (2022). However, some jurisdictions have expanded similar SYG laws to shield criminals as well. *Garcia v. State*, 286 So. 3d 348, 351 (Fla. Dist. Ct. App. 2019). In such jurisdictions, a defendant who engaged in criminal activity may still qualify for SYG immunity if he first satisfies the common law duty to retreat. *Id.* The common law duty is to use “all reasonable means of escape” before resorting to deadly force. *Id.*

This approach reads a provision into the statute that is nonexistent in the plain language. However, even if this Court elects to adopt this approach, the Defendant would be barred from SYG immunity because he made no effort to retreat.

On the contrary, the Defendant freely initiated repeated contact with and leveraged psychological terror against Wilson. The Defendant threw up a gun-like hand sign and threatened, “Pop pop.” He made a throat-slicing gesture at Wilson before disappearing around a blind corner. He fired the first shot in the conflict. Not only did the Defendant fail to retreat, but he was also the first aggressor.

This Court should not expand Stetson SYG law to cover criminals.

## **This Court should deny the Defendant’s Motion to Dismiss because he initiated aggression—he imagined a threat and responded with unnecessary, deadly force.**

Even if this Court finds that the Defendant did not engage in criminal activity, his status as an initial aggressor may independently bar him from immunity. Stetson Stat. § 776.012 (2022). If a defendant fails to demonstrate a desire to disengage from the conflict he created, he is barred from SYG immunity. § 776.041.

A defendant may demonstrate that desire through one of two practical ways: (1) if the threat of force was so significant that he reasonably believed he was in “imminent danger of death or great bodily harm [and] exhausted every reasonable means to escape,” *or* (2) he withdrew in good faith from “physical contact” with the assailant and clearly indicated a desire to withdraw. §§ 776.041(2)(a)–(b). The Defendant failed to meet either of these standards.

This Court should deny the Defendant’s Motion to Dismiss because he initiated aggression, unreasonably imagined danger, and made no effort to withdraw.

### A. The Defendant initiated aggression when he verbally and physically threatened Wilson.

 A person is not justified in self-defense if he initially provokes “the use or threatened use of force against himself.” Stetson Stat. § 776.041(2) (2022). While no existing Stetson case law addresses initial aggression, courts in other jurisdictions generally find an initial aggressor is the one who pursued violence when he was not facing an imminent threat or attack. *See, e.g.*, *Mojica v. Fischer*, No. 00 Civ. 8933RJHKNF, 2005 WL 2230450, at \*8 (S.D.N.Y. Sept. 12, 2005). Although words alone are insufficient to render someone an initial aggressor, words paired with threatening actions change the analysis. *See, e.g.*, *People v. Santiago*, 515 N.E.2d 228, 234 (Ill. App. Ct. 1987) (indicating that shouting gang slogans and displaying gang signals evidenced aggression). A defendant who verbally threatens another, and indicates he is ready to attack through conduct, is the initial aggressor. *See* *Commonwealth v.* *Mouzon*, 53 A.3d 738, 751 (Pa. 2012).

Courts also give great weight to the broader context of a situation in determining the initial aggressor. *E.g.*, *Rodriguez v. Heath*, 138 F. Supp. 3d 237, 251 (E.D.N.Y. 2015). While an analysis of the seconds before the shooting is critical to establish that the Defendant initiated aggression, this Court should first turn its attention to the tension-building events of the entire morning.

The threats the Defendant made toward Wilson before breakfast laid the foundation for his later aggressive conduct. In *United States v. Rice*, 673 F.3d 537, 541 (7th Cir. 2012), the Seventh Circuit held that the defendant was the initial aggressor when he continuously pursued the victim with a weapon and the intent to harm him. Earlier in the evening, during the first confrontation, the defendant had swung at the victim. *Id.* at 538. The defendant had left that initial confrontation to retrieve a weapon and then further pursued the victim. *Id.* at 541. The court held that because the defendant intentionally awaited the victim, before he knew his target would return, he was the initial aggressor. *Id.* Here, the Defendant approached and criticized Wilson during the first interaction. This behavior alone is hostile.

Choosing to stay within or return to a tense situation often characterizes an initial aggressor. *United States v. McCants*, No. 22-14287, 2024 WL 507491, at \*3 (11th Cir. Feb. 9, 2024). Other characteristics include showing a handgun in addition to threats and aggressive behavior. *Edwards v. Marshall*, No. 7:17-cv-00571-ACA-JHE, 2019 WL 4408447, at \*7 (N.D. Ala. Apr. 23, 2019) (“The petitioner did not have the pleasure of standing his ground since he provoked the physical confrontation and was the initial aggressor by the showing of his hand-gun, the threats of shooting others and his general highly aggressive behavior.”).

Like the initial aggressor in *Rice*, who left the scene and retrieved a weapon to prepare for his target, the Defendant returned to the motel—armed with a purpose. At the Defendant’s insistence, the brothers returned to the motel. The Defendant went out of his way to intimidate Wilson specifically, returning with a loaded gun in his pocket. The Defendant deliberately walked by Wilson’s room, for the second time that day.

The Defendant even took it a step further with threatening conduct. “Pop pop,” he said, with his hand raised in the shape of a gun. He then made a clear and crisp motion, dragging his thumb across his neck. Threatening comments paired with threatening acts—just as the Defendant intended.

Plainly put, the Defendant “creat[ed] the confrontation rather than unavoidably responding to it.” *Rice*, 673 F.3d at 541. The Defendant fired at Wilson before Wilson even had his firearm pointed in the Defendant’s direction. If any question remains that the Defendant initiated aggression, then surely pointing and firing a gun at Wilson—before Wilson could raise his own—eliminates any doubt. The Defendant made it clear he was ready to attack.

Therefore, this Court should find that the Defendant was the initial aggressor.

### B. The Defendant only imagined imminent danger because no threat of force existed.

 Once a defendant is deemed the initial aggressor, that defendant still has two ways to qualify for SYG immunity. One way, discussed below, is to prove that the force or threat of force against the aggressor was “so great” that it caused him to reasonably believe that he was “in imminent danger of death or great bodily harm.” Stetson Stat. § 776.041(2)(a) (2022). Before responding with force to the threat, the initial aggressor must “exhaust[] every reasonable means to escape.” *Id.* The second way is to withdrawal, discussed further in Subsection C of this Memorandum. § 776.041(2)(b); Non-Mov.’s Mem. Opp’n Mot. Dismiss at 16.

This Court should find that no threat of force existed to make the Defendant reasonably believe he was in imminent danger, but even if it did, the Defendant did not exhaust every reasonable means to escape.

#### **Wilson never threatened the Defendant.**

Most courts hold that the reasonable belief requirement compels an objective analysis: whether “a reasonably cautious and prudent person” would have believed that force *alone* could enable escape from a perilous threat. *Verne v. Jones*, No. 3:15cv001-LC/CAS, 2017 WL 1190386, at \*9 (N.D. Fla. Mar. 10, 2017). A minority of courts also include a subjective analysis. *Mouzon*, 53 A.3d at 752 (holding that the defendant must have a sincere *and* reasonable belief that he was in imminent danger). The danger, though, “need not have been actual.” *State v. Floyd*, 186 So. 3d 1013, 1015 (Fla. 2016).

 Both a subjective and objective analysis reveal that the Defendant did not reasonably fear an imminent threat because Wilson did not threaten the Defendant. Standing outside one’s motel room hardly qualifies as a threat of force so great a reasonable person would believe he was in imminent danger. The Defendant did not definitively know Wilson had a weapon until the shootout. He claimed that he only saw Wilson holding something that was “obviously a black object.” If seeing a black object in someone’s hand were sufficient to cause a reasonable person to believe he was in imminent danger, this Court would have an infinite docket.

Even if the Defendant saw Wilson in the parking lot with a weapon, without more this cannot be deadly force. *See* *Howard v. State*, 698 So. 2d 923, 925 (Fla. Dist. Ct. App. 1997); *Little v. State*, 302 So. 3d 396, 399 (Fla. Dist. Ct. App. 2020) (“When a person points a loaded firearm at another person *and* issues a command to do something, this is generally an implied declaration that the failure to abide by the command will result in the discharge of the firearm, i.e., deadly force.”) (emphasis added). If Wilson was armed at that time, he did not point the gun. He did not issue any verbal threats or commands. When the Defendant walked by him, Wilson did not engage.

 Even if the Defendant did perceive Wilson to be a threat, this perception vanished after Wilson suffered a shot in the chest and fell to his side. In *People v. Hinds*, No. 326923, 2016 WL 3317411, at \*4 (Mich. Ct. App. June 14, 2016), the court held that the defendant could not have reasonably believed it necessary to shoot at a fleeing victim to prevent imminent death or harm. The Defendant shot Wilson in the chest and back. Wilson turned around prior to the Defendant’s second shot—struck in the back as he attempted to flee.

Therefore, this Court should find the Defendant could not perceive a fleeing Wilson to be a threat.

#### **The Defendant ignored multiple, reasonable escape routes.**

 To claim immunity, the initial aggressor must also have “exhausted every reasonable means to escape” before he used force. § 776.041(2)(a).

 Stetson law demands that an initial aggressor exhaust every reasonable escape route. The Defendant, who antagonized and subsequently shot Wilson, deemed force the only option. In reality, the Defendant ignored three reasonable escape options: the parking lot, the opposite end of the breezeway, and the stairs. Finally, the best option would have been to refrain from returning to an already tense environment—one the Defendant created.

Therefore, this Court should find that the Defendant did not reasonably fear an imminent threat or exhaust every reasonable means of escape before resorting to deadly force.

### The Defendant did not withdraw from physical contact because he continued to shoot Wilson, the wounded and fleeing victim.

The second and final way that an initial aggressor may claim immunity is if he withdrew in good faith from “physical contact” with the assailant and clearly indicated his wish to withdraw, but the assailant continued to pursue him. Stetson Stat. § 776.041(2)(b) (2022). The Defendant fails to meet this standard because he did not withdraw from physical contact, which began when the Defendant shot Wilson with his illegally concealed weapon.

 The Supreme Court held that if an initial aggressor withdrew in good faith, and the assailant still pursued him, his formerly abandoned right of self-defense would be restored. *Rowe v. United States*, 164 U.S. 546, 556 (1896). A good faith withdrawal is a plain and genuine surrender. *Id.* Ultimately, the jury must decide whether a defendant withdrew in good faith. *Id.* at 557. A reasonable jury could not find that an aggressor withdrew if he “drew [a] gun, thus escalating the force employed, and [] refused to put the gun away.” *People v. Tucker*, 530 N.E.2d 1079, 1085 (Ill. App. Ct. 1988).

The Defendant plainly did not withdraw. He returned to the motel a mere forty-five minutes after creating a heated confrontation with Wilson. The Defendant glared intensely at him. The Defendant made threatening gestures toward Wilson, indicating his readiness to shoot. Although the Defendant walked into the breezeway, he immediately drew his weapon and fired seconds later. The Defendant escalated the force he employed and refused to stop shooting the fleeing Wilson, who was wounded and falling to the ground.

Therefore, this Court should find that the Defendant did not withdraw.

# **CONCLUSION**

The Defendant broke the law. Without a license, he carried a handgun in a manner designed to conceal its existence. He engaged in criminal activity, and he did not retreat.

He was the initial aggressor. Upon return to an already tense situation, the Defendant verbally and physically threatened Wilson. The Defendant ignored reasonable escape routes, making no effort to withdraw. “One cannot support a claim of self-defense by a self-generated necessity to kill.” *United States v. Peterson*, 483 F.2d 1222, 1231 (D.C. Cir. 1973). Unclean hands cannot grasp immunity.

Accordingly, the Defendant’s Motion to Dismiss should be denied.

Respectfully submitted,

/s/ 119

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