TEAM: 121

Case No: 2024-CR-319

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IN THE SUPERIOR COURT OF THE OF THE STATE OF STETSON

PINELLA COUNTY JUDICIAL DISTRICT

September 1, 2024

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STATE OF STETSON,

*Prosecution,*

v.

JAY CAMERON,

*Defendant*

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**PROSECUTION’S MEMORANDUM OF LAW**

**IN OPPOSITION TO DEFENSE’S MOTION TO DISMISS**

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# INTRODUCTION

The Motion to Dismiss should be denied because Defendant Jay Cameron was engaged in unlawful activity at the time of the shooting and was the initial aggressor. When the Defendant began shooting at the victim, Ryan Wilson, he was concealing a weapon from the ordinary sight or knowledge of another person. Violating Stetson statute by carrying a concealed weapon without a permit. As such, the Defendant had a duty to retreat before restoring to deadly force. Instead of retreating, the Defendant changed direction and directly engaged the victim. Therefore, he was not entitled to Stand Your Ground law immunity that would support the movant’s Motion to Dismiss. Additionally, Defendant was the first person to act in such a manner that created a reasonable belief in another person’s mind that physical force was about to be used upon that other person. Through repeated threats throughout the day, the Defendant made it clear to the victim that his life was in imminent danger. As the initial aggressor, the Defendant cannot invoke Stand Your Ground law immunity to support the movant’s Motion to Dismiss.

Accordingly, we respectfully request this Court deny the movant’s Motion to Dismiss based on Stand Your Ground law immunity.

# STATEMENT OF FACTS

 On August 6, 2022, the victim, Ryan Wilson, was staying at the Boals Motel after hosting a party the night before. (Interview with Ryan Wilson, “Wilson,” at 56). At approximately 9:45 A.M., Mr. Wilson was sitting outside his hotel room with Kenny Gray when Defendant Jay Cameron first walked by Mr. Wilson. (Wilson at 56); (Interview with Kenny Gray, “Gray,” at 45). The Defendant was accompanied by one other individual, who has now been identified as his brother, Greg Cameron. (Wilson at 57); (Interview with Jay Cameron, “Jay,” at 19). While walking to breakfast with his brother, the Defendant made his first threat on Mr. Wilson’s life, telling Mr. Wilson, “[t]his will be my turf soon.” (Wilson at 57). When Mr. Wilson rebuked this statement, the Defendant doubled down, stating, “[j]ust you wait and see old man.” (Wilson at 57).

 Approximately 45 minutes later, while returning from breakfast, the Defendant made his second threat on Mr. Wilson’s life when, according to witnesses, he said, “pop pop – you’re done,” and gestured towards Mr. Wilson with his left hand in the shape of a gun. (Gray at 47); (Interview with Greg Cameron, “Greg,” at 34). The Defendant continued towards the Breezeway, but before entering, stared Mr. Wilson down and made another hand gesture, this time dragging his thumb across his neck to indicate a threat on Mr. Wilson’s life. (Wilson at 59-60). At this time, Mr. Wilson was under the impression that the Defendant was threatening to kill him. (Wilson at 60).

 After the Defendant entered the Breezeway, and in fear for his life, Mr. Wilson armed himself with a friend’s firearm and approached the edge of the Breezeway to see where the Defendant was going. (Wilson at 60). He did this to “keep eyes on him” if he needed to defend himself from what he believed was an imminent attack. (Wilson at 60). Before Mr. Wilson entered the Breezeway, and without warning that Mr. Wilson was armed or walking towards the Breezeway, Defendant stopped, pulled his firearm, and immediately began shooting at Mr. Wilson once he began to round the corner. (Exhibit 8 at 0:06-0:07). Defendant fired first, prompting Mr. Wilson to return fire. (Wilson at 60). The Defendant struck Mr. Wilson in the upper left chest, prompting Mr. Wilson to turn to try to run away. (Wilson at 60). As he was running away, Mr. Wilson tripped and fell. (Wilson at 61). The Defendant did not stop shooting, shooting Mr. Wilson in the back after Mr. Wilson had dropped his firearm and fallen to the ground. (Wilson at 61); (Greg at 36).

 Following the shooting, the Defendant fled the area, instructing his brother to pick up the weapon and run. (Greg at 38). From there, the Defendant and his brother hid the weapons in the Defendant’s hotel room and fled the County. (Greg at 38).

# ARGUMENT

1. Jay Cameron Had a Duty to Retreat Because he was Engaged in a Criminal Activity.

Movant’s Motion to Dismiss should be denied because the defendant had a duty to retreat that he did not fulfill, and thus, he may not claim immunity under Stetson’s Stand Your Ground statute. Under Stetson statute § 776.012, “a person who uses or threatens to use deadly force . . . does not have a duty to retreat and has the right to stand his or her ground if the person . . .  is not engaged in a criminal activity . . . .” Stetson Penal Code § 776.012 (2022). Conversely, one who is engaged in unlawful activity does have a duty to retreat before resorting to deadly force. *Id.*

Florida’s concealed carry law contains exact language to Stetson’s Stand Your Ground law. Fla. Penal Code § 776.012 (2022). In *Jimenez v. State*, the defendant was engaged in the unlawful activity of carrying a concealed weapon without a permit, in violation of Florida’s concealed carry statute. 353 So.3d 1286, 1288 (Fla. Dist. Ct. App. 2023); Fla. Penal Code § 790.01 (2022). The court held that the defendant had a duty to retreat because he illegally carried a concealed weapon. *Jiminez v. State*, 353 So.3d at 1288*.*

Here, like the defendant in *Jimenez*, Jay Cameron was illegally carrying a concealed weapon and thus had a duty to retreat. *Id.* Retreat was physically possible, yet Jay Cameron did not do so. Therefore, Jay Cameron may not invoke immunity under Stetson’s Stand Your Ground statute.

1. The Defendant’s Weapon was Unlawfully Concealed.

Stetson penal code § 790.01(2) made the carrying of a concealed firearm without a license a third-degree felony. Stetson Penal Code § 790.01(2) (2022). The statute defined “concealed firearm” as “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.*

Despite a lack of binding precedent explaining “ordinary sight or knowledge” under Stetson’s concealed carry statute, state and federal courts rely on an “ordinary observation” test. *See* *United States v. Flum*, 518 F.2d 39, 45 (8th Cir. 1975). Various states, which use different statutory language in their concealed carry statutes, consistently use the same test to determine whether a firearm is concealed, focusing on whether the manner in which the weapon is carried by the individual leaves the firearm open to the ordinary observation of the public. The Circuit Court of Appeals for the Eighth Circuit states, “the classic definition of a concealed weapon is one which is hidden from ordinary observation.” *Id.* Therefore, the test which should be applied to this case is whether the firearm was carried in a manner which would conceal the firearm from the ordinary observation of the public.

Florida case law provides insight into how courts determine whether a weapon is concealed from “ordinary sight” within the meaning of Florida’s concealed carry statute. Fla. Penal Code § 776.012 (2022). In *Ensor v. State*, the Florida Supreme Court held that to determine whether a firearm is concealed, the critical question is whether someone near a person with a firearm “may by *ordinary observation* *know* the questioned object to be a firearm.” 403 So.2d 349, 355 (Fla. 1981)(emphasis added). In *Ensor*, the court affirmed the conviction of a defendant whose weapon was protruding from underneath a floor mat. 403 So. 2d at 351. There, an officer saw a white object protruding from underneath the floor mat and was able to identify the object as a pistol. *Id.* Here, the defendant’s weapon was not even as visible as that of the defendant in *Ensor*. Jay Cameron’s weapon was concealed entirely from visibility within a sweatshirt pocket, with the exception that one witness was able to describe the object as black but was not able to identify the object as a firearm. (Gray at 46). Therefore, Jay Cameron’s weapon was certainly concealed under Florida’s “ordinary sight” standard and Florida’s application of the “ordinary observation” test.

In addition to Florida, Maryland, Ohio, Oregon, Illinois, Wisconsin, and District of Columbia courts rely on ordinary observation for determining that a weapon is concealed. Maryland and Ohio do not have statutory definitions of a concealed weapon, and the District of Columbia defines “concealed” as “a manner that is entirely hidden from view of the public when carried on or about a person.” D.C.M.R. § 2344.1 (2022). Despite differences in statutory language, Maryland, Ohio, and District of Columbia courts apply the same test to determine when a weapon is concealed: “A weapon is concealed if it is so situated as not to be discernible by ordinary observation by those near enough to see it if it were not concealed, who would come into contact with the possessor in the usual associations of life —absolute invisibility is not required." *Shipley v. State*, 243 Md. 262, 268, 220 A.2d 585, 588-9 (1966); *State v. Pettit*, 20 Ohio App. 2d 170, 174, 252 N.E.2d 325, 328 (1969); *Abed v. United States*, 278 A.3d 114, 127 (D.C. 2022). For example, in *Abed v. United States*, the Superior Court of the District of Columbia explained that the “ordinary observation” test is most appropriate considering a lack of a uniform definition for concealed firearm. *Id.*

Case law in Oregon reveals a more specific standard for determining whether a weapon is concealed, further defining what constitutes “ordinary observation” by elaborating on a policy consideration. In *State v. Leake*, an Oregon Court of Appeals stated that the history of Oregon’s concealed weapons law serves public safety by providing notice of the presence of a weapon. 527 P.3d 1054, 1059 (Ore. Ct. App. 2023). This policy objective suggests that an individual “should not need to engage in heightened observation to notice the gun.” *Id.* In *Leake*, the defendant had a holstered gun which was masked by dark clothing. *Id.* at 1063. An officer was able to discern part of a dark object, but the officer could not recognize the object as a firearm until the defendant lifted his sweatshirt. *Id.* Therefore, the court held that the firearm was concealed in light of the legislative intent behind the concealed carry statute. *See Id*.

Like the defendant in *Leake*, where the firearm was masked by the defendant’s clothing, Jay Cameron’s weapon was concealed such that witnesses were not able to definitively identify the object. *Id.* at 1063; (Jay at 21); (Wilson at 59). Neither the manner in which Jay Cameron carried the firearm nor his behavior put others on reasonable notice of the presence of a firearm. In his deposition, Jay Cameron stated that he made a motion with his left hand to resemble a gun and said “pop pop” so that the victim would know he was carrying a weapon. (Jay at 21). However, the defendant’s behavior certainly was not sufficient to put a person on notice of the gun’s presence through ordinary observation, evidenced by the fact that witnesses were not able to definitively discern that Jay Cameron had a gun. (Gray at 46); (Wilson at 59). While witnesses testified that they presumed the object might be a weapon based on the conduct of the defendant and prior knowledge of the defendant’s behavior, the witnesses did not conclusively know the object to be a weapon and conceded it may have been an object other than a firearm. (Gray at 46); (Wilson at 58). Jay Cameron did not show his firearm or state that he had a firearm, but at best, implied that he might have presently or might use a firearm in the future. (Jay at 21).

Case precedent in Illinois also relies on the “ordinary observation” standard. Illinois defines a concealed firearm as “a loaded or unloaded handgun carried on or about a person completely or mostly concealed from view of the public or on or about a person within a vehicle.” 430 Ill. Comp. Stat. 66/5. In *People v. Eustice*, the Illinois Supreme Court stated that the concealment of a firearm “does not mean that the firearm shall be carried in such manner as to give absolutely no notice of its presence. It merely requires that the firearm shall be concealed from ordinary observation.” 20 N.E.2d 83, 85 (Ill. 1939). In *Eustice*, a police officer observed one defendant drop his pistol to the floor of a vehicle after having held it between his legs. *Id.* at 161. Another defendant attempted to kick a pistol, which had been lying on the floor of the vehicle, underneath a seat. *Id.* Even though the officer had seen both weapons and knew of their existence, the court affirmed defendants’ convictions of carrying concealed firearms, holding that the defendants had been concealing their guns by placing them on the floor or between their legs and were attempting to *further* conceal them by kicking or dropping their guns on the floor. *Id.* at 162. Though the weapons were partially visible, and the officer knew that the weapons were there, the weapons were not open to ordinary observation and were thus concealed. *Id.*

Here, unlike the defendant in *Eustice*, others were not able to conclusively determine that the object Jay Cameron was carrying was a firearm, with the exception only of the defendant’s brother, who had prior knowledge of the weapon. *See* R. at 31. The court in *Eustice* determined that the defendant’s weapons were concealed despite the fact that the weapons were visible and recognizable to the officers. 20 N.E.2d at 85. Because witnesses in this case had even less notice of the weapon than those in *Eustice*, Jay Cameron’s firearm was concealed.

Case law in Florida, Maryland, Illinois, Oregon, Wisconsin, the District of Columbia, and Ohio demonstrate that though states differ in their statutory definitions of a concealed firearm, courts persistently rely on whether a firearm is open to ordinary observation by the public. Such a test should be applied in this case. Not only do all of these jurisdictions use this standard and the policy consideration behind concealed carry statutes, but cases in these jurisdictions held that a firearm was concealed in fact patterns where a defendant’s weapon was even more visible or discernable than that of Jay Cameron’s. The defendant’s weapon was not open to the ordinary observation of others because it was not open to ordinary sight, nor were other witnesses put on sufficient notice of the weapon’s presence.

The fact that Jay Cameron did not possess a permit to carry a concealed firearm is undisputed. The defendant’s firearm was concealed from the ordinary sight or knowledge of other people because the firearm was concealed from ordinary observation. Thus, the defendant was in violation of Stetson’s concealed carry law at the time of the shooting.

1. Jay Cameron did not fulfill his duty to retreat.

A defendant has a duty to retreat before resorting to deadly force if the defendant is engaged in criminal activity. Stetson Penal Code § 776.012 (2022). A defendant who has a duty to retreat must use all reasonable means in his power that are consistent with his or her own safety to avoid the need to take a life or “retreat to the wall.” *Jenkins v. State*, 942 So.2d 910, 914 (Fl. Ct. App. 2006) (internal citations omitted. In *Wyche v. State*, the Florida Court of Appeals for the Third District upheld a conviction for second-degree murder against a defendant when “before either had made a move past the ‘squaring-off stage,’” the defendant ran away to arm himself with a pair of scissors, then returned to stab the victim in the chest. 170 So.3d 898, 908 (Fla. Ct. App. 2015).

 Here, video evidence shows that the defendant did not use all reasonable means in his power to retreat. (Exhibit 8). To the contrary, Jay Cameron returned to where his victim was standing after walking away down a hallway, and had his weapon drawn before the victim turned the corner to return fire. (Exhibit 8 at 0:09). Jay Cameron reasonably could have continued down the hallway, but like the defendant in *Wyche*, physically changed direction to return to the victim. *Id.*; (Exhibit 8 at 0:08). Therefore, Jay Cameron did not fulfill his duty to retreat.

 Jay Cameron had a duty to retreat because he was engaged in the criminal activity of carrying a concealed firearm without a license, and he did not retreat. Jay Cameron, therefore, may not claim immunity under Stetson’s Stand Your Ground law.

1. Jay Cameron, Whether Engaged in Criminal or Unlawful Activity, was the Initial Aggressor and Had a Duty To Retreat.
2. Jay Cameron was the Initial Aggressor.

 The Defendant was the initial aggressor and, as such, cannot invoke a Stand Your Ground defense. Stetson Penal Code, 776.041, states in part that the Stand Your Ground defense does not apply to a person who initially provokes the use or threatened use of force against himself or herself. Stetson Penal Code § 776.041(2). Stetson statutes do not establish a definition of “initial aggressor.” Further, the State has found no binding precedent to establish a concrete definition or test to apply in determining the Defendant’s status while considering a Motion to Dismiss. However, case law surrounding jury instructions involving Connecticut’s use of physical force in defense of person statute serves as interpretive reference in defining “initial aggressor” because the statute is substantially similar to 776.041. Connecticut statute states in relevant part that “a person is not justified in using physical force when . . . he is the initial aggressor.”  CT ST § 53a-19.

 In *State v. Singleton*, the Connecticut Supreme Court established that “the initial aggressor is the person who first acts in such a manner that creates a reasonable belief in another person’s mind that physical force is about to be used upon that other person.” 292 Conn. 734, 763 (2009). The court further held that “the first person to use physical force is not necessarily the initial aggressor.” *Id*.

For example, in *State v. Skelly*, the Appellate Court of Connecticut held that the defendant was the initial aggressor even though the victim struck the defendant first. 124 Conn. App. 161, 168, 3 A. 3d 1064, 1068 (2010). In *Skelly*, the victim and the defendant were engaged in a verbal dispute, which escalated when the defendant stood up before the victim, prompting the victim to stand and attempt to strike the defendant. *Id*. The court held that it was reasonable to conclude that the defendant “was the initial aggressor because, although it may have been the victim who first punched the defendant, the defendant was the party who invited the physical response from the victim.” *Id*. at 169.

Further, in *State v. Rivera*, the defendant argued that the evidence did not support a finding that he was the initial aggressor because the victim pepper sprayed the defendant before he pulled a knife. 187 Conn. App. 813, 845 (Conn. App. Ct. 2019), *aff’d*, 335 Conn. 720, 240 A. 3d 1039 (2022). The court rejected this argument, highlighting that prior to the victim spraying the defendant, the defendant approached the victim with a metal pipe and subsequently struck the victim’s vehicle with said pipe. *Id*. at 846. Based on this, the court held that the evidence was sufficient for the jury to reasonably determine that the “defendant’s actions caused [the victim] to believe reasonably that the defendant was about to use physical force upon him and, thus, that the defendant was the initial aggressor.” *Id*.

Additionally, in *State v. Berrios*, the defendant appealed his manslaughter conviction, in part, on the basis that the trial court improperly instructed the jury on the initial aggressor exception to self-defense. 187 Conn. App. 661, 713, 203 A. 3d 571, 604 (2019). In *Berrios*, the defendant ran over the victim with his car, claiming he did so in self-defense because the victim was throwing rocks at his vehicle. *Id*. Notably, an hour prior to the incident in which the defendant ran the victim over, the defendant, with his vehicle’s lights turned off, accelerated and swerved at the victims, forcing them to jump away for safety. *Id*. The defendant argued that the evidence did not support an initial aggressor instruction because approximately one hour had elapsed between the first and second incidents. The Appellate Court of Connecticut held that the passage of one hour did not “render the initial aggressor exception inapplicable.” *Id*. at 718. The court further noted that based on the testimony that the defendant attempted to run over the victims an hour before actually running them over, “the jury reasonably could have found that the defendant was the initial aggressor.” Through this, the court signaled that the determination of who the initial aggressor was is not based solely on the events immediately before the altercation but on the totality of the circumstances that placed the victim in the state of mind that “physical force is about to be used upon that other person.” *Singleton*, 292 Conn. at 763.

In this case, based upon Connecticut’s interpretation of “initial aggressor,” the defendant was the initial aggressor as he created a reasonable belief in the victim’s mind that physical force was about to be used upon him.

In *Skelly*, the court found that the defendant promoted the physical contact and initiated the altercation based on verbal and physical actions. 124 Conn. App. at 168. Similarly, the defendant initiated the altercation based on verbal and physical actions. The initiation of the altercation began on the morning of the incident at 9:45 when the defendant told the victim, “[t]his will be my turf soon.” (Interview with Ryan Wilson, “Wilson,” at 56-57). When the victim verbally confronted the defendant for threatening him, the defendant replied, “[j]ust you wait and see old man.” (Wilson at 57). Approximately 45 minutes later, the defendant again threatened the victim by making a “quick sliding motion with his thumb across his neck,” which the victim interpreted to be the defendant’s way of threatening to kill him. (Wilson at 60). These actions prompted the victim to follow the defendant to ensure he had “eyes on him in case [he] needed to defend [himself].” (Wilson at 60). At this time, like in *Skelly*, it is reasonable to conclude that the defendant was the initial aggressor as he was inviting physical contact and had created a reasonable belief in the victim’s mind that physical force was about to be used upon him. 124 Conn. App. at 168. However, unlike in *Skelly*, where the victim attacked the defendant first, in this case, the defendant drew his weapon and began firing at Ryan Wilson prior to him fully rounding the corner. (Exhibit 8 at 0:07).

Further, like in *Riveria*, where the court held there was sufficient evidence that the defendant’s actions caused the victim to reasonably believe that the defendant was about to use physical force upon him, Ryan Wilson reasonably believed that the defendant was about to kill him. 187 Conn. App. at 845. During the time leading up to the shooting, the defendant made two separate threats to Mr. Wilson’s life, which culminated in the defendant’s attempt to gun down Mr. Wilson. However, even if we were to disregard the defendant’s first threat, the defendant’s second threat clearly put Mr. Wilson in fear for his life, just like the defendant in *Riveria*. *Id*. Again, however, unlike the victim in *Riveria*, who attacked the defendant first, Mr. Wilson did not attack the defendant until after he was being shot at. Instead, Mr. Wilson simply walked to the edge of the breezeway wall, where the defendant had gone, to see where he was going. (Wilson at 60). At this point, Mr. Wilson had armed himself to protect himself from what he correctly believed was an imminent attack. (Wilson at 60). However, he did not verbally threaten the defendant, nor was it clear that the defendant was even aware that Mr. Wilson had a weapon before the defendant pulled his firearm. Instead, based on video evidence of the crime, it is clear that before Mr. Wilson even reached the corner of the wall, the defendant was in the process of removing his firearm from its concealed position to shoot Mr. Wislon. (Exhibit 8 at 0:06-0:07).

Finally, like in *Berrios*, these were not separate incidents and cannot be treated as such. 187 Conn. App. at 713. The court in *Berrios* made it clear that the primary consideration in determining who the initial aggressor was is based on who originally placed the belief of imminent physical danger in the other person’s mind. *Id*. Here, like in *Berrios*, approximately one hour had passed from when the defendant made the first threat to when the shooting took place. *Id*.; (Wilson at 60). The defendant’s first verbal threats, “[t]his will be my turf soon old man,” and “[j]ust you wait and see old man,” are clear indicators that the defendant planned on targeting Mr. Wilson at some point in the near future. (Wilson at 57). These threats, combined with the defendant’s second threat in which he physically suggested Mr. Wilson’s imminent death, placed a reasonable belief in Mr. Wilson’s mind that physical danger was imminent. This is supported by Mr. Wilson’s testimony, in which he stated he was under the impression that the defendant was threatening to kill him. (Wilson at 60). Thus, Mr. Wilson’s actions in following the defendant, to see where he was going, and to avoid being attacked while his back was turned, were completely justified. (Wilson at 60).

Mr. Wilson did not become the initial aggressor simply because he wanted to make sure he would not be killed once the defendant rounded the corner. As the Supreme Court of Connecticut stated in *Singleton*, “a person may respond with physical force to a reasonably perceived *threat* of physical force without becoming the initial aggressor,” doing anything else would force the victim to “stand by meekly and wait until an assailant struck the first blow.” 292 Conn. at 762-63. Again, the State emphasizes that Mr. Wilson did not respond with physical force. He simply wanted to make sure his life was not in imminent danger as he believed it to be. Allowing an initial aggressor to avoid prosecution based on their victim peering around a corner would lead to a bizarre result that the Stetson legislature could not have intended.

The defendant, through his verbal threats and physical actions, acted first in such a manner that created a reasonable belief in Ryan Wilson’s mind that physical force was about to be used upon him. *See* *Singleton*, 292 Conn. 734, 763 (2009). As such, the defendant was the initial aggressor and had a duty to retreat, as previously discussed.

# CONCLUSION

For the foregoing reasons, the Government respectfully requests this Court

deny Defense’s Motion to Dismiss. The Defendant was 1) engaged in unlawful activity at the time of the shooting and 2) was the initial aggressor, as supported by the evidence and the law. Therefore, the motion should be dismissed.

Respectfully submitted,

*/s/ TEAM 121*

*Attorneys for the Prosecution*

Team 121