TEAM NO. 123

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.*

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

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

**DEFENDANT’S MOTION TO DISMISS**

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

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*Attorneys for the State of Stetson*

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**INTRODUCTION**

This Court should deny Defendant Jay Cameron’s Motion to Dismiss based on Stand Your Ground Immunity under Stetson law. The State will prove, by clear and convincing evidence, that Defendant is not entitled to immunity under Stetson’s Stand Your Ground law. First, Defendant was engaged in criminal activity and failed to act on his duty to retreat. Second, Defendant was the aggressor throughout his interactions with the victim and refused to withdraw.

**STATEMENT OF FACTS**

Defendant Jay Cameron (“Defendant”) is charged with the Attempted Murder in the Second Degree of victim Ryan Wilson, pursuant to Stetson General Statutes §§ 782.04 and 777.04, and one count of Carrying a Concealed Weapon, pursuant to Stetson General Statute § 790.01. R. 67.

On August 6, 2022, Ryan Wilson was staying in Room 1045 of the Boals Motel in Pinella County. R. 12, 17. That morning, Mr. Wilson was standing outside of his motel room with two of his friends – Kenneth Gray and Tony D. R. 45, 49. Around 9:45am, Defendant and his older brother, Greg Cameron, walked past Mr. Wilson and his friends. R. 56. Mr. Wilson and Mr. Gray allege that Defendant stated, “This will be my turf soon.” R. 45, 57. After additional words were exchanged, Defendant and his brother left the motel. R. 57.

At approximately 10:30am, video surveillance footage provided by the motel captured Defendant and his brother returning to the motel. R. 16 at 00:00. There, Defendant is seen walking through the motel parking lot wearing a red sweatshirt with his hoodie pulled tightly over his head, and his right hand in his front pocket. R. 16 at 00:00-01. Defendant’s brother followed closely behind. R. 16 at 00:00-01. It appeared to Mr. Wilson that Defendant was walking quickly and holding an object in the front pocket of his sweatshirt. R. 58. He initially believed that it could have been a cell phone because he did not want to assume that Defendant would “pull a gun on [him] in broad daylight.” R. 59. Nonetheless, Defendant admits that he was holding on to a large .40 caliber firearm in his front pocket, and that he did not have a license to carry a concealed weapon. R. 4, 21.

Defendant said, “[p]op pop” and used his left hand to make the shape of gun as he walked past Mr. Wilson and his friends. R. 21. He did this because other people were around, and he did not “want to just go pointing a gun at someone[.]” R. 21. Defendant claimed he assumed that Mr. Wilson was in possession of a gun because of his reputation and he “was standing there with his right hand in his pocket[,]” holding a black object. R. 22. He, however, admits that Mr. Wilson never pointed a gun at him prior to the shooting. R. 22. Mr. Gray heard Defendant use the words “pop pop,” but was unable to see his hand gesture. R. 47. Mr. Wilson saw Defendant make a fist with his thumb out, sliding it across his neck. R. 60. He understood this motion to mean that Defendant was threatening to kill him. R. 60. Defendant then proceeded through the breezeway, where Mr. Wilson lost sight of him. R. 16 at 00:08, 60. Tony D. handed Mr. Wilson his own gun in response to Defendant’s actions. R. 60. He proceeded to walk to the edge of the wall to keep an eye on Defendant. R. 60.

The video surveillance footage captured Defendant entering the breezeway, turning around, pulling out his gun, and firing shots at Mr. Wilson, all within the span of two seconds. R. 16 at 00:08-10. The video does not show Mr. Wilson returning fire until the last second, when his firearm first appears in the bottom left of the frame. R. 16. at 00:10. Mr. Wilson attempted to back away, yet Defendant continued to fire shots at him. R. 60. Defendant’s brother acknowledged Mr. Wilson’s attempt to escape by saying that “it looked as if [he] was trying to turn and run away like a little coward as my brother was stepping into him, but he fell down.” R. 36. Mr. Wilson suffered two gunshot wounds, one to his upper left chest and the second to the lower right side of his back. R. 43. Defendant alleged that he was shot in the stomach at some point. R. 23.

Following the shooting, Mr. Wilson fell to the ground and dropped his gun. R. 61. Defendant admits that he instructed his brother to grab Mr. Wilson’s gun, which he did, and they escaped through the breezeway to his room. R. 23. At this point, the Petersburg Police Department (“PPD”) received a report that a bleeding man in a red sweatshirt, Defendant, was seen stumbling into Room 1077 at the Boals Motel. Defendant and his brother then left the guns in the room and left the motel. R. 23.

On August 22, 2022, a warrant for Defendant’s arrest was granted. R. 68. He was arrested following a motor vehicle stop on July 14, 2024. R. 4. He was then arraigned the following day, with an evidentiary hearing set for October 3-6, 2024. R. 70, 74. Defendant’s motion to dismiss based on Stand Your Ground immunity followed. R. 74.

**ARGUMENT**

Stetson’s Stand Your Ground law justifies the use of deadly force where an individual reasonably believes that the use of such force is necessary to prevent imminent death or great bodily injury. Ste. Stat. § 776.012. An individual who “is not engaged in criminal activity, in a place where [they have] a right to be, and is not the aggressor” may use such force without the duty to retreat. *Id*. As is made clear in other jurisdictions with similar Stand Your Ground laws, an individual who fails to satisfy any one of these requirements must exercise a duty to retreat. *Jimenez v. State*, 353 So. 3d 1286, 1288 (Fla. Dist. Ct. App. 2023); *Doerhoff v. State*, 675 S.W.3d 877, 882 (2023); *Thomas v. State*, 224 So. 3d 688, 693 (Ala. Crim. App. 2016). Under Stetson General Statute § 776.032, an individual acting within the parameters of § 776.012 is immune from criminal prosecution for their justified use of deadly force.

The State will show, by clear and convincing evidence, that Defendant failed to act within the parameters of Stetson’s Stand Your Ground law. Evidence is clear and convincing when the truth of facts asserted is highly probable. *Cummings v. State*, 310 So. 3d 155, 158-59 (Fla. Dist. Ct. App. 2021). First, the evidence will show that Defendant was engaged in criminal activity at the time of the shooting for his unlicensed carry of a firearm and failed to exercise his duty to retreat. Second, Defendant acted as the aggressor in his altercation with the victim and failed to make a good faith effort to withdraw. Thus, Defendant is not entitled to immunity under Stetson General Statutes §§ 776.012 and 776.032 and this Court should deny Defendant’s motion to dismiss.

1. **DEFENDANT IS NOT ENTITLED TO IMMUNITY UNDER STETSON’S STAND YOUR GROUND LAW AS HE WAS ENGAGED IN CRIMINAL ACTIVITY AND FAILED TO ACT ON HIS DUTY TO RETREAT PRIOR TO THE SHOOTING**

Defendant deprived himself of Stand Your Ground immunity when he engaged in criminal activity and failed to retreat prior to the shooting in question. Stetson’s Stand Your Ground law draws a clear distinction between those individuals who are obligated to retreat before their use of deadly force, and those who have no such duty. Ste. Stat. § 776.012. Defendant finds himself grouped with the former. This Court should deny Defendant’s motion to dismiss as he is not entitled to immunity under Stetson’s Stand Your Ground law. To begin, Defendant was engaged in criminal activity prior to his use of deadly force for his unlicensed carry of a firearm. In subjecting himself to the duty to retreat, Defendant did not attempt to do so, despite it being a feasible option.

1. **By Carrying And Concealing An Unlicensed Firearm, Defendant Was Engaged In Criminal Activity Prior To The Shooting**

Stetson does not place limitations on the scope of the term “criminal activity” as used in its Stand Your Ground law. Thus, it must be presumed that the term broadly covers all unlawful activity. *United States v. Albertini*, 472 U.S. 675, 680 (1985) (“Courts in applying criminal laws generally must follow the plain and unambiguous meaning of the statutory language.”). Defendant was engaged in criminal activity for carrying a concealed weapon prior to his use of deadly force, in violation of Stetson General Statute § 790.01(2). In the alternative, Defendant’s actions with an unlicensed firearm may also constitute a criminal violation of numerous other firearm laws, regardless of his explicit charges. *State v. Kirkland*, 276 So. 3d 994, 997 (Fla. Dist. Ct. App. 2019).

1. **Defendant’s actions constitute criminal activity for violating Stetson’s concealed carry law.**

Defendant’s unlicensed concealed carry of a firearm prior to the shooting constitutes criminal activity. Under Stetson’s concealed carry law, “[a] person who is not licensed to carry a concealed firearm and who carries a concealed firearm on or about [their] person commits a felony of the third degree.” Ste. Stat. § 790.01(2). The statute defines a “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*.

Upon analyzing similar concealed carry laws across several jurisdictions, the Supreme Court of Florida held that “absolute invisibility is not a necessary element” of concealment. *Ensor v. State*, 403 So. 2d 349, 354 (Fla. 1981). Rather, the central focus of what constitutes a “concealed firearm” is “on the ‘manner’ in which the weapon is carried on or about the person.” *Dorelus v. State*, 747 So. 2d 368, 371 (Fla. 1999). To determine whether a firearm is “concealed,” the focus must be on the firearm’s physical placement on the person, and whether it was hidden from “the casual and ordinary observation of another in the normal associations of life.” *Ensor*, 403 So. 2d at 354.

It is undisputed that Defendant did not have a concealed carry license for the .40 caliber semiautomatic handgun that he was carrying on the date of the shooting. R. 4. This firearm was carried on Defendant’s person, in the front pocket of the red sweatshirt that he was wearing that morning. R. 21. The video surveillance footage provided by the manager of the Boals Motel supports this point, as Defendant is seen walking through the motel parking lot and into the breezeway, keeping his right hand in his front pocket. R. 16 at 00:00-08. At no point did Defendant explicitly inform Mr. Wilson that he was armed with a firearm, nor did he display it to him. Instead, he only said, “pop pop” and used his left hand to make the shape of a gun as he walked past. R. 21. Defendant’s purported intention was to subtly indicate to Mr. Wilson that he was armed because other people were around, and he did not “want to just go pointing a gun at someone[.]” R. 21. Regardless of his intentions, Mr. Wilson was unable to make out what Defendant had said, nor could he understand his hand gesture. R. 59. Kenneth Gray also expressed some confusion about Defendant’s hand gesture. R. 47.

In any case, even if Mr. Wilson had a suspicion that Defendant was armed, the standard for concealment is not an “absolute” one. *Ensor*, 403 So. 2d at 354. Just as “absolute invisibility” from the ordinary sight of another is not a requirement of concealment, an absolute lack of knowledge should also not be a requirement. *Id*. The focus must be placed on Defendant’s physical action of hiding his firearm in the front pocket of his sweatshirt, combined with his failure to explicitly announce that he was armed. Because Defendant concealed the existence of his firearm “from the ordinary sight or knowledge of another,” his actions constitute criminal activity in violation of Stetson’s concealed carry law. Ste. Stat. § 790.01(2).

1. **Defendant’s actions may also constitute criminal violations of numerous other firearm laws.**

In the alternative, this Court should find that Defendant’s actions constitute criminal activity in other respects beyond Stetson’s concealed carry law. Assuming, *arguendo*, this Court finds that Defendant did not act in a “manner designed to conceal the existence of the firearm,” his actions could constitute a violation of numerous other firearm laws. Ste. Stat. § 790.01(2). Florida’s Stand Your Ground law shares distinct similarities with Stetson’s law. *See* Fla. Stat. § 776.012. In *Kirkland*, the Fifth District of Florida’s District Court of Appeals held that “criminal activity” may be found in other violations of similar firearm laws, regardless of the formal charges brought against the defendant. *Kirkland*, 276 So. 3d at 997. There, the defendant was charged with one count of shooting at, within, or into a building. *Id*. at 996. The court found that the defendant was not entitled to immunity under Florida’s Stand Your Ground law as he was engaged in criminal activity that violated “any of several crimes.” *Id*. at 995. Specifically, the defendant’s actions violated Florida’s open carry and improper exhibition of a firearm laws as he indisputably waved a firearm around a group of men to seemingly threaten or frighten them. *Id*. at 996-97.

Here, again, Defendant does not dispute his carry of a firearm on the morning of August 6, 2022. R. 21. He admits to being armed and saying “pop pop” while using his left hand to make the shape of a gun. R. 21. It should be noted that Defendant is alleged to have engaged in these actions without being confronted or attacked. R. 21. The video surveillance footage captures Defendant swiftly moving through the parking lot and into the breezeway, leaving no time for Mr. Wilson or his friends to physically confront him. R. 16 at 00:00-08. Further, the bottom right corner of the footage clearly shows that Mr. Wilson remained by his hotel room. R. 16 at 00:08.

Similar to the defendant in *Kirkland*, Defendant’s actions were an attempt to threaten or frighten Mr. Wilson and his friends. *Kirkland*, 276 So. 3d at 996. In the State of Florida, these threatening actions would constitute a violation of its open carry law and, or an improper exhibition of a firearm. *Id*. at 997. From Stetson’s concealed carry law to numerous other firearm offenses involving open use or an improper exhibition of a firearm, Stetson’s Stand Your Ground law encompasses all criminal activity. *Albertini*, 472 U.S. at 680. As Defendant’s actions would violate “any of several crimes,” he had the duty to retreat prior to the use of deadly force. *Kirkland*, 276 So. 3d at 996; Ste. Stat. § 776.012.

1. **Defendant Failed To Act On His Duty To Retreat Prior To The Shooting Despite Retreating Being Feasible**

An individual who is engaged in criminal activity has a duty to retreat “before [their] use of deadly force will be justified under the Stand Your Ground law.” *Jimenez*, 353 So. 3d at 1288. This duty to retreat requires the individual to use “all reasonable means in [their] power, consistent with [their] own safety, to avoid the danger and to avert the necessity of taking human life.” *Jenkins v. State*, 942 So. 2d 910, 914 (Fla. Dist. Ct. App. 2006). However, where retreating would be “futile,” deadly force remains justifiable. *Thompson v. State*, 552 So. 2d 264, 266 (Fla. Dist. Ct. App. 1989).

Here, Defendant failed to act on his duty to retreat, despite it being a feasible option prior to his use of deadly force. The video surveillance footage shows that Defendant revealed his firearm and shot at Mr. Wilson first. R. 16 at 00:09. Mr. Wilson’s firearm does not appear in the footage until after Defendant began firing. R. 16 at 00:09. Further, Defendant admits that Mr. Wilson did not point a firearm at him prior to the shooting. R. 22. He could have proceeded down the breezeway, as he was already doing so without issue, yet he turned around and opened fire. R. 16 at 00:07-08. He only “assumed” that Mr. Wilson was armed because of his reputation. R. 22. This assumption alone cannot render Defendant’s ability to retreat futile. *Waters v. State*, 174 So. 3d 434, 435 (Fla. Dist. Ct. App. 2015) (recognizing that the defendant was left with no ability to retreat where the victim’s force against him “was so great that he reasonably believed he was in imminent danger of death or great bodily harm.”).

Mr. Wilson exerted no level of force to support a finding that Defendant’s belief of imminent danger was reasonable. *Id*. He merely received a firearm from his friend, who handed it to him in response to Defendant’s threatening actions and looked around a wall to keep his eyes on Defendant. R. 60. At no point did he raise the firearm to the Defendant prior to the shooting, as the Defendant admits, and the video surveillance footage shows. R. 16 at 00:10, 22. Defendant implicated his own safety and that of others in failing to use all reasonable means to retreat prior to shooting Mr. Wilson. *Jenkins*, 942 So. 2d at 914. His attempt to take Mr. Wilson’s life was not a “necessity” but rather, a choice. *Id*. Thus, Defendant’s use of deadly force cannot be justified under Stetson’s Stand Your Ground law. *Jimenez*, 353 So. 3d at 1288. In sum, the State has shown, by clear and convincing evidence, that Defendant is not entitled to Stand Your Ground immunity. This Court should dismiss Defendant’s motion to dismiss and allow his charges to proceed.

1. **DEFENDANT IS NOT ENTITLED IMMUNITY UNDER STETSON’S STAND YOUR GROUND LAW BECAUSE HE WAS THE AGGRESSOR AND FAILED TO WITHDRAW**

Defendant’s initial use of force, his continued behavior as the aggressor, and failure to withdraw from the altercation, extinguishes his immunity under Stetson’s Stand Your Ground law. Stetson General Statute § 776.041 expands on the understanding of the use or threatened use of force by the aggressor in Stand Your Ground claims. An initial aggressor is not entitled to immunity unless they reasonably believe that they are in imminent danger and have exhausted every reasonable means of escape, or if the defendant makes a good faith effort to withdraw from the altercation but the assailant continues the use of force. *Id*.

This Court should deny Defendant’s motion to dismiss as he is not entitled to immunity under Stetson’s Stand Your Ground law. Defendant provoked the initial confrontation with Mr. Wilson, and failed to make any effort, let alone a good faith effort, to withdraw from the altercation after it had commenced. Furthermore, “[w]ith regard to the initial aggressor exception, the jury must determine whether the defendant initially provoked the use of force against himself.” *State v. Floyd*, 186 So. 3d 1013, 1022 (Fla. 2016).

1. **Defendant Was The Aggressor In His Altercation With Mr. Wilson**

As the term “aggressor” is not defined in the code, this Court must consider “the ‘plain, natural, and ordinary’ meaning of the phrase and consult dictionary definitions of those terms that may illuminate what the legislature intended.” *State v. McNally*, 361 Or. 314, 321 (2017). This Court must also keep in mind the familiar rule that where the intent of the Legislature, as evidenced by a statute, is plain and unambiguous, there is no need for any construction or interpretation of the statute; courts need only give effect to the plain meaning of its terms. *Floyd*, 186 So. 3d at 1019. The term “aggressor” has long been a legal term of art associated with self-defense. *See State v. Gray*, 43 Or. 446, 455 (1904). It should be emphasized that the initial aggressor is someone who provokes or causes the use of force against themselves. *Thompson v. State*, 257 So. 3d 573, 581 (Fla. Dist. Ct. App. 2018).

1. **Defendant failed to exhaust every reasonable means of escape.**

The facts of this case clearly show that Defendant was not only the initial aggressor, but that Mr. Wilson never used force great enough for Defendant to reasonably believe he was in imminent danger having exhausted all reasonable means of escape. On the contrary, Defendant’s aggressive actions drew Mr. Wilson’s attention to the breezeway. R. 60. On his volition, Defendant immediately pulled a weapon and began firing at Mr. Wilson. R. 16 at 00:09. It is also apparent that Defendant, rather than withdrawing, continued to shoot Mr. Wilson in the back while he was trying to run away. R. 60.

Defendant maintains that when he saw Mr. Wilson put something in his pocket, “[he] couldn’t see what it was, but knowing Wilson’s violent rep, [he] *assumed* it was a gun.” R. 22 (emphasis added). The Eighth Circuit has held “[f]ear that another might employ deadly force, without any action by the other to support that fear, is insufficient to create a reasonable belief of imminent danger.” *United States v. Davidson*, 108 F.4th 706, 711 (8th Cir. 2024); *United States v. Greer*, 57 F.4th 626, 630 (8th Cir. 2023) (holding that defendant's belief that “‘something was about to go down’ . . . did not justify [defendant's] attempt to use deadly force, in the presence of innocent bystanders, before [the victim] took any action likely to cause death or great bodily harm”).

Even if Defendant can show that the force he believed Mr. Wilson was showing was so great that he reasonably feared for his life, Defendant failed to exhaust every reasonable means of escape or withdraw from the altercation. The First District Court of Appeals in Florida recently ruled on a case where the defendant shot and killed the victim in a hotel room. The defendant there, who was the initial aggressor, was immune from prosecution solely because he “huddled in a corner of the motel room behind the inward-opening door, shielding himself from the deceased's repeated punches—had exhausted all reasonable means of escape.” *Smith v. State*, 387 So. 3d 495, 497 (Fla. Dist. Ct. App. 2024). There, the defendant was entitled to immunity because he met the criteria of Florida’s Stand Your Ground. *Id*.While the statutes used in *Smith* and the statute Stetson employs are similar, the facts of *Smith* differ drastically from the facts here.

1. **Defendant further failed to make a good faith effort to withdraw from the altercation.**

Here, Defendant not only had a reasonable means of escape, but it is undisputed, and supported by eyewitness statements and video evidence, that this shooting occurred in what is referred to as a breezeway at the Boals Motel. R. 16. at 00:09-10. A breezeway is commonly defined as “a roofed often open passage connecting two buildings (such as a house and garage) or halves of a building.” *Breezeway*, Merriam-Webster Online, https://www.merriam-webster.com/dictionary/breezeway (last visited Aug. 19, 2024). Defendant had a clear and reasonable route to not only withdraw from the altercation, but to escape from it.

The Kansas Supreme Court recently denied a defendant immunity under Kansas’ initial aggressor statute. *State v. Collins*, 461 P.3d 828, 837 (2020). There, the defendant was charged with second-degree murder and reckless aggravated battery, following an altercation that took place in an apartment complex staircase and ended with two sisters being stabbed by the defendant. Kansas’ Stand Your Ground and aggressor laws mirror Stetson’s, as it also includes a section adding further qualifications for the initial aggressor to receive immunity. Kan. Stat. Ann. § 21-5226(c)(1)-(2). The lower court ruled that the defendant exhausted every reasonable means to escape and therefore dismissed the charges against him. The Court reversed, holding that an “ordinarily prudent and cautious person could conscientiously entertain a reasonable belief—based upon the facts found by the district court—that Collins did not exhaust every reasonable means to escape” and “did not ‘in good faith, . . . [withdraw] from physical contact with the assailant[.]’” *Collins*, 461 P.3d at 837.

Here, the escalating sequence of events that ended with Mr. Wilson being shot by Defendant must also be examined. The facts of this case are almost identical to the facts in *Collins*. This altercation began in the parking lot of the Boals Motel. R. 57. Defendant left the area after the first altercation, and then returned a short time later at which the second alteration began. R. 16 at 00:00. Defendant had a clear path of escape which he didn’t take, and instead used force on the victim. And finally, like in *Collins*, Defendant made no good faith effort or indication that he wished to withdraw from the altercation. He could have easily continued through the breezeway, effectively escaping and withdrawing from any subjective sense of imminent danger he may have feared.

Instead, Defendant did quite the opposite and advanced towards Mr. Wilson. Defendant’s own brother noted in his statement how “it looked as if Wilson was trying to turn and run away like a little coward as my brother was stepping into him, but he fell down.” R. 36. This account clearly describes Defendant’s purposeful continuation of violence, and Mr. Wilson’s intent to remove himself. The testimony of Defendant’s own kin speaks for itself but, to go further, Mr. Wilson’s medical reports show that Defendant continued to shoot at him, delivering a gunshot wound to his back. R. 43. A victim being shot in the back may support an inference that the victim was trying to leave. *State v. Cannon*,459 S.E.2d 238, 241 (1995). Further, when there is no dispute that a victim was shot in the back, a claim of self-defense will fail. *See* *State v. Roland*, 2017 WL 656794 ¶ 23 (Ohio App. 2017).

It is evident that Defendant was the initial aggressor, and at no time and in no way, did he exhaust every reasonable mean of escape or make a good faith effort to withdraw from the altercation. For these reasons, Defendant’s motion to dismiss should be denied.

1. **Defendant’s Characterization Of “Aggressor” Is Ultimately A Question For The Jury**

Defendant’s motion to dismiss should be denied because “[w]hether defendant acted in self-defense or as the ‘initial aggressor’ in the conflict is a factual question, with all the deference to the jury it entails.” *People v. Cruz*, 2021 IL App (1st) 190132, ¶ 44. Furthermore, any kind of stand your ground claim hangs on the balance of reasonable belief and that is a question for the jury. As the Tennessee Court of appeals has held, it is up to the jury with proper instructions, not the trial court, to determine "whether the defendant's belief in imminent danger was reasonable, whether the force used was reasonable, and whether the defendant was without fault.” *State v. Pruitt*, 510 S.W.3d 398, 420 (Tenn. 2016) (quoting *State v. Renner*, 912 S.W.2d 701, 704 (Tenn. 1995)).

Many of the keyfacts, such as to who shot first, who initiated the altercation, and who reasonably feared for their safety, are at the forefront of the facts that Defendant disagrees with. This leads to not one, but multiple factual questions. “[W]hen a defendant invokes his right to stand his ground and there are questions concerning who was the initial aggressor, the jury may be instructed to make at least twelve related but independent factual findings.” *Floyd*, 186 So. 3d at 1022. And because this is a case built around eyewitness statements, “[w]here the verdict turns on the credibility of conflicting testimony and the credibility of the witnesses, it is the jury's duty to resolve the conflict.” *Dille v. State*, 334 So. 3d 1162, 1198 (Miss. Ct. App. 2021) (quoting *Birge v. State*, 216 So. 3d 1174, 1178 (¶18) (Miss. Ct. App. 2017)). For these reasons, this Court should deny Defendant’s motion to dismiss and allow a jury to decide these questions of fact.

**CONCLUSION**

This Court should deny the Defendant’s Motion to Dismiss. Defendant was engaged in criminal activity and had a duty to retreat at the time of the shooting. Further, he was the aggressor throughout his interactions with the victim and refused to withdraw. Thus, Defendant is not entitled to immunity under Stetson General Statutes §§ 776.012 and 776.032.

Respectfully submitted,

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