Team: 125

Case No. 2024-CR-319

IN THE

SUPERIOR COURT OF THE STATE OF STETSON

PINELLA COUNTY JUDICIAL DISTRICT

STATE OF STETSON,

*Prosecution,*

vs.

JAY CAMERON,

*Defendant*.

**PROSECUTION’S MEMORANDUM OF LAW**

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

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# **INTRODUCTION**

The Prosecution, by and through counsel, files this response in opposition to Defendant Jay Cameron’s motion to dismiss the indictment pursuant to Stetson General Statutes §§ 776.012 and 776.032. For the reasons set forth below, the Prosecution respectfully requests that this Court deny Defendant’s motion.

# **STATEMENT OF FACTS**

On the morning of August 6, 2022, Ryan Wilson woke up at 8:00 a.m. at the Boals Motel (R. at 56.) Ryan spent time with his girlfriend until 9:30 a.m. when she left for work (R. at 56.) At 9:45 a.m., Ryan and his friends decided to step out of the motel room to get some fresh air when the defendant, Jay Cameron, walked by and said, “This will be my turf soon” (R. at 56-57.) When Ryan responded to the defendant’s threatening comment, the defendant responded, “Just you wait and see old man” (R. at 57.)

According to Kenny Gray, a witness and friend of the victim, the threatening comment made by the defendant prompted Wilson to retrieve an object from his motel room and place it in his right pocket (R. at 46.) Kenny “couldn’t say for sure” what the object was and only recalled that the object was “black” (R. at 46.) According to Wilson, the object he retrieved was his personal cell phone (R. at 57.) Wilson himself does not carry a firearm (R. at 57.)

Nearly forty-five minutes later, the defendant returned to the Boals Motel with the hood of his sweatshirt tied tightly around his face and his right hand in the front pocket, apparently holding an object (R. at 58.) The defendant looked at Wilson with a “hard stare” and subsequently made a sliding motion across his neck (R. at 59-60.) Key witnesses also reportedly heard the defendant tell Wilson, “Pop pop – you're done” (R. at 47.)

The defendant walked into the breezeway of the motel (R. at 60.) Alarmed by the defendant’s threats, Wilson walked by the wall of the breezeway to monitor the defendant’s next moves (R. at 60.) Wilson then obtained a gun from his friend Tony D to defend himself if necessary (R. at 60.)

No further words were exchanged between the defendant and the victim before the shooting occurred. In fact, Kenny recalled a “heavy silence” prior to shots being fired (R. at 48). Unprovoked by Wilson, the defendant turned around and fired a shot into the victim’s left chest (R. at 43.) It was only after the defendant shot at him that Wilson returned fire in self-defense (R. at 60.)

The defendant contends that Ryan Wilson fired the first shot, and the defendant acted in self-defense in response (R. at 23). Yet not one key witness, besides the defendant himself, has said with certainty that the defendant did not fire the first shot. Even the defendant’s brother, Greg Cameron, “couldn’t tell who shot first” (R. at 35). But Kenny claimed it was the defendant who shot first (R. at 47.)

The defendant did not stop after hitting the victim once. Ryan backed away from the defendant and unsteadily attempted to run away (R. at 60-61.) Ryan struggled to run due to the pain from the first shot and tripped (R. at 61.) The defendant then shot the victim again in the back (R. at 61.)

The victim ultimately sustained two life-threatening gunshots wounds and was rushed to the Petersburg General Hospital Emergency Department, where he laid in critical condition (R. at 43.) He suffered severe blood loss, internal organ damage, and tissue damage from his wounds.

# **ARGUMENT**

The State of Stetson’s “Stand Your Ground Law” states,

“A person is justified in using or threatening to use deadly force if he or she reasonably believes that using or threatening to use such force is necessary to prevent imminent death or great bodily harm to himself or herself or another or to prevent the imminent commission of a forcible felony. A person who uses or threatens to use deadly force in accordance with this subsection does not have a duty to retreat and has the right to stand his or her ground if the person using or threatening to use the deadly force is not engage in a criminal activity, is in a place where he or she has a right to be, and is not the aggressor.”

*See* Stetson Gen. Stat. § 776.012. The statute lists three elements that entitle a person to invoke the defense. The person using or threatening to use deadly force must not be engaged in a criminal activity, must be in a place where they have the right to be, and must not be the aggressor.

In this case, the second element – being in a place where one has the right to be – is not in dispute. We the Prosecution must only establish that the defendant was engaged in criminal activity at the time of the shooting or that the defendant was the initial aggressor in the shooting of the victim. If either of these facts are found to be true, the defendant may not use the “Stand Your Ground” defense for the charges against him. For the reasons that follow, the Prosecution maintains that the defendant both was engaged in criminal activity and was the initial aggressor in the shooting.

# **The defendant was engaged in unlawful activity at the time of the shooting, and therefore he may not seek immunity under Stetson’s “Stand Your Ground” law.**

The defendant was engaged in criminal activity at the time of the shooting and thus fails to meet the criteria set forth in Stetson General Statutes § 776.012. Specifically, the defendant violated General Statutes § 790.01(2) in effect at the time by carrying a concealed weapon without a license. Furthermore, case law affirms that the gun the defendant used in the shooting was sufficiently concealed such that he violated the law prohibiting concealed carry. The defendant therefore does not qualify for immunity from criminal prosecution for justifiable use of force under General Statutes § 776.032.

# **At the time of the shooting, carrying a concealed weapon without a license was forbidden by statute in Stetson.**

To invoke Stetson’s “Stand Your Ground” law, the individual hoping to employ the defense must “not be engaged in a criminal activity” at the time they are using or threatening to use deadly force. *See* Stetson Gen. Stat. § 776.012. If the individual seeking to invoke the law was involved in criminal activity, they already fail to meet the requirements necessary to invoke the defense.

On August 6, 2022, carrying a concealed firearm without a license was a felony in the State of Stetson. According to Stetson General Statutes 790.01(2), in effect at the time of the shooting,

A person who is not licensed to carry a concealed firearm and who carries a concealed firearm on or about his or her person commits a felony of the third degree. A “concealed firearm” is one “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.”

*See* Stetson Gen. Stat. § 790.01(2). Though the law in the State has changed since the date of the shooting, this subsequent change in the law is not retroactive. It matters only that the defendant violated the former law when it was in effect.

Here, the defendant was not licensed to carry a concealed firearm. Yet on August 6, 2022, the defendant was in possession of a firearm which he carried in such a manner as to conceal the weapon from the ordinary sight of the victim just moments before the shooting occurred. The defendant wore a sweatshirt with his hand placed in the sweatshirt’s front pocket (R. at 58.) It was apparent to the victim that the defendant was holding something in his pocket, but it was unclear to him what the object was (R. at 58-59.) The victim also heard the defendant “mutter a few words,” but he was unable to decipher what the defendant had said (R. at 59.) Based on the information obtained during the police interview with Kenny, this was almost certainly when the defendant told the victim, “Pop pop – you're done” (R. at 47.) The fact that the victim was unable to hear the defendant “mutter” this threat further suggests that the defendant did not intend the victim to hear this threat. Based on these facts, the defendant did carry the gun “in a manner designed to conceal the existence of the firearm from the ordinary sight or knowledge of another person” in violation of Stetson General Statutes § 790.01(2). As such, the defendant committed a third-degree felony and was thus engaged in criminal activity.

# **Case law further affirms that the defendant carried the gun in such a manner as to conceal the gun from the ordinary sight and knowledge of the victim.**

Case law sheds important light on the question of what it means to carry a firearm “in a manner designed to conceal the existence of the firearm from the ordinary sight or knowledge of another person.” *Id.* Specifically, case law suggests that the determination of whether a weapon is concealed varies case by case and “that the test is one of degree.” *Powell v. State*, 369 So. 2d 108 (Fla. Dist. Ct. App.), *dismissed*, 373 So. 2d 461 (Fla. 1979). Importantly, “a firearm need not be completely concealed to be ‘concealed.’” *Id.*

For example, in *Powell v. State*, the defendant was walking on a street when a police officer driving past initially noticed a “bulge” in the defendant’s pocket which he suspected was a gun. *Id.* Looking more closely, the officer observed the butt of a pistol. *Id.* On appeal of his conviction for carrying a concealed firearm, the appellate court reversed, reasoning that the officer “did not state that he saw a bulge which could have been a gun or an object which appeared to be a gun[,] he saw a gun.” *Id.* The court thus held “that the weapon was not concealed from the ordinary sight of another person.” *Id.*

Here, the victim did not see any part of the defendant’s gun (R. at 58.) He only could have suspected that the defendant might have possessed a gun based on the way the defendant placed his hand in his pocket (R. at 59.) In the police interview with the victim, the victim never mentioned hearing the defendant say, “Pop pop – you're done.” The victim only heard the defendant “mutter a few words,” but they were indecipherable (R. at 59.) In *Powell*, the court suggested that the determination of whether a defendant is guilty of concealed carry is heavily fact dependent. Importantly, the court contrasted the cases of seeing “a bulge which could have been a gun or an object which appeared to be a gun” with the case of *actually* seeing a gun. This suggests that the appellate court in *Powell* would have been more likely to find that the weapon was concealed if the officer saw only a bulge in the defendant’s pocket or an object only resembling a gun.

The defense will argue that when the defendant spoke the threat, “Pop pop – you're done,” he gave the victim knowledge of his possession of the gun and it was therefore not concealed. The defense will stress that the fact that others at the scene heard these words, including Greg Cameron and Kenny, means that the victim reasonably should have heard it, too. However, this argument fails for two reasons. First, case law suggests that the critical key in determining whether a weapon is concealed is determining if the weapon is hidden from the “ordinary sight of another person,” meaning “the casual and ordinary observation of another in the normal associations of life.” *Ensor v. State*, 403 So. 2d 349, 354 (Fla. 1981). Secondly, the question of whether a firearm is hidden from ordinary observation must be viewed in the “totality of the circumstances.” *Commonwealth v. Montgomery,* 660 Pa. 439, 234 A.3d 523, 535 (2020).

In *Dorelus v. State*, the defendant was pulled over by police for a traffic infraction when the officer noticed the butt of a handgun underneath the radio. *Dorelus v. State*, 747 So. 2d 368, 369-370 (Fla. 1999). The defendant was subsequently charged with carrying a concealed firearm. *Id.* at 370. The court stressed that “[t]he focus should remain on whether the weapon was carried in such a *manner* as to conceal it from *ordinary* sight.” *Id.* at 372. Considering several facts, the court determined the weapon was not concealed because it was not covered in any manner, there was no attempt by defendant to hide the firearm, and there was no indication the officer had difficulty recognizing the object as a firearm. *Id.* at 373.

Viewing the case in the “totality of the circumstances,” the defendant’s weapon here was hidden from the ordinary observation of the victim. Unlike in *Dorelus*, where the weapon was not covered, there was no attempt by the defendant to hide the firearm, and the officer had no difficulty recognizing the object, the victim in this case was greatly uncertain about whether the object the defendant had in his pocket was a gun. The victim noticed that the defendant kept his hand in his pocket and seemed to be holding something, but the victim never saw the entire object or even part of the object (R. at 58-59.) The defendant made efforts to hide the gun from the victim by keeping it contained within his pocket. The defendant did not wave the gun around in the air or point it at the victim.

Even considering the comment, “Pop pop – you're done,” in the totality of the circumstances, this threat is not enough to overcome concealment. Most importantly, the victim did not report hearing this comment. The victim only reported hearing the defendant “mutter a few words,” but he was unable to understand what the defendant said (R. at 59.) But even assuming the victim did hear the defendant speak this threat, it is still not enough to constitute “ordinary observation” alone. Since the firearm was hidden from the victim's view, the victim might not have believed the defendant had a gun even if he had heard the threat. Furthermore, the comment “Pop pop – you're done” is cryptic and does not suggest that the defendant had a gun at that time. This case might be different if witnesses had explicitly heard the defendant tell the victim, “Watch your back – I have a gun,” or some variation of this comment.

1. **Even assuming that the defendant was not engaged in unlawful activity during the shooting, the court should still deny the defendant’s motion to dismiss.**

Irrespective of whether the defendant was engaged in unlawful activity at the time of the shooting, the Court should nevertheless deny the defendant’s motion to dismiss because the defendant was (1) the initial provocateur, and (2) the initial aggressor.

* + 1. **The defendant does not qualify for immunity under Stetson’s stand your ground law because he was the initial provocateur.**

Where a defendant was the initial aggressor, that defendant does not qualify for immunity under the stand your ground law. *See* Stetson Gen. Stat. § 776.012 (“A person who uses or threatens to use deadly force in accordance with this subsection does not have a duty to retreat and has the right to stand his or her ground if the person using or threatening to use the deadly force is not . . . the aggressor.”); *see also State v. Canto*, No. F10-36620, 2013 WL 2645517, at \*7 (Fla. Cir. Ct. June 12, 2013) (“While Stand Your Ground removes the duty to retreat, it does not provide a right to advance.”).

Here, there is conflicting evidence as to which party—the defendant or the victim—fired the first shot, thereby becoming the initial aggressor. Whereas the defendant contends that Ryan Wilson fired the first shot, thus prompting him to act in self-defense, (R. at 60), Wilson contends that the defendant fired the first shot. (R. at 60.)

However, neither the court nor the jury need to determine that fact. The court serves as a de facto gatekeeper; the decision whether to give or withhold an initial aggressor instruction rests entirely within the trial court’s discretion. *Campbell v. State*, 812 So. 2d 540, 543 (Fla. Dist. Ct. App. 2002).

While a determination that a given defendant was the initial aggressor disqualifies a defendant from claiming stand your ground immunity, it is not the only disqualifier. Irrespective of who fired the first gunshot, it is undisputed that the defendant made provocatory comments. According to Kenny, the defendant walked by and stated, “this will be my turf soon,” prompting Wilson to retrieve an unknown black object, that “[c]ould have been a cell phone[.]” (R. at 46.) Wilson identified the object he grabbed as his cell phone, and not a gun. (R. at 57.) Wilson himself does not carry a firearm (R. at 57).

Therefore, even assuming *arguendo* that the defendant was not the initial aggressor, the defendant was nevertheless the initial provocateur and is therefore ineligible for immunity under the stand your ground law.

* + 1. **Where there is a factual dispute as to whether the defendant was the initial aggressor, it is the jury’s job to resolve conflicting evidence in favor of either account.**

Where, as here, there is conflicting evidence regarding whether the defendant was the initial aggressor, the court should give the jury an initial aggressor instruction along with an instruction on self-defense, thereby enabling the jury “to resolve the issue on either hypothesis.” *People v. Santiago*, 515 N.E.2d 228, 234 (Ill. 1987).

The defendant may be entitled to an initial aggressor instruction, but deciding whether the defendant was the initial aggressor is a question for the jury’s determination. *See State v. Burns*, 292 S.W.3d 501, 505 (Mo. Ct. App. 2009) (“The only time an initial aggressor instruction should *not* be given is when there is absolutely *no* *evidence* that the defendant was the initial aggressor.”)

There is ample evidence for the jury to reach a determination that the defendant was the initial aggressor. Wilson recalls a “heavy silence” before the shots began and stated that the defendant returned with his hood up, made a motion across his neck, and said “pop pop - you’re done” before firing the first shot. (R. at 47.) Wilson admits that he returned fire with a gun that Tony handed him. (R. at 60.)

Wilson was running away when the second shot was fired into his back. (R. at 61.) “‘The law of self-defense is a law of necessity;’ the right of self-defense arises only when the necessity begins, and equally ends with the necessity . . . .” *United States v. Peterson*, 483 F.2d 1222, 1229 (D.C. Cir. 1973) (quoting *Holmes v. United States*, 11 F.2d 569, 574 (1926)). The necessity had ended by the time Wilson was running away—the same time that the defendant fired the second shot into Wilson’s back. (R. at 61.) As such, at a minimum, the Court should DENY the defendant’s motion to dismiss and enable the jury to serve its intended role.

# **CONCLUSION**

For all the above reasons, the Court should DENY Defendants’ Motion to Dismiss.

WHEREFORE, the Prosecution moves this Honorable Court to DENY Defendant’s motion to dismiss the indictment pursuant to Stetson General Statutes §§ 776.012 and 776.032.

Dated: September 1, 2024 /s/ Team #125

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| * 1. Team #125  1. **STATE OF STETSON** 2. *Pinella County Judicial District* |