TEAM NO. 116

Case No. 2024-CR-319

**IN THE**

**SUPERIOR COURT OF THE STATE OF STETSON**

**PINELLA COUNTY JUDICIAL DISTRICT**

STATE OF STETSON

*Non-Movant*

v.

JAY CAMERON

*Movant*.

**BRIEF OF THE NON-MOVANT**

**TABLE OF CONTENTS**

TABLE OF AUTHORITIES ……………………………………………………………iii

INTRODUCTION ………………………………………………………………………. 1

STATEMENT OF FACTS ……………………………………………………………... 2

ARGUMENT ……………………………………………………………………………..4

1. THIS COURT SHOULD DENY THE DEFENDANT’S MOTION TO DISMISS­–AN INDIVIDUAL HAS A DUTY TO RETREAT AND MAY NOT STAND THEIR GROUND WHEN ENGAGED IN A CRIMINAL ACTIVITY………….4
   1. THE DEFENDANT HAD A DUTY TO RETREAT WHEN HE COMMITTED A FELONY BY CONCEALING HIS SEMI-AUTOMATIC HANDGUN………………………………………………………………...5
   2. EVEN IF CAMERON FAILED TO CONCEAL HIS SEMI-AUTOMATIC HANDGUN, HIS ATTEMPT TO DO SO CONSTITUTES A CRIMINAL OFFENSE AND DISQUALIFIED HIM FROM THE RIGHT TO STAND HIS GROUND……………………………………………………………..8
2. DEFENDANT VIOLATED STETSON GENERAL STATUTE § 790.01(2) WHEN HE CARRIED A CONCEALED WEAPON AT BOALS MOTEL…………………………………………………………………………...11
   1. DEFENDANT WAS THE INITIAL AGGRESSOR AND DOES NOT HAVE IMMUNITY FOR VIOLATING § 790.01(2)…………………….12
      1. Defendant Was Not In Imminent Danger………………………….13
      2. Defendant Never Withdrew From Physical Contact With The Victim Until The Victim Was On The Ground………………….………...15

CONCLUSION…………………………………………………………………………..16

SIGNATURE BLOCK…………………………………………………………………..17

**TABLE OF AUTHORITIES**

*Adams v. Murphy*, 394 So. 2d 411 (Fla. 1981)……………………………………......8–10

*Barley v. Commonwealth*, Record No. 0117-00-3, 2000 Va. App. LEXIS 765

(Ct. App. Nov. 28, 2000)……………………………………………………………...8, 10

*Carlton v. State*, 103 So. 3d 937 (Fla. 5th DCA 2012)…………………………………8, 9

*Cruz v. State*, 189 So. 3d 822 (Fla. 4th DCA 2015)……………………………………..13

*Cummings v. State*, 310 So. 3d 155 (Fla. 2d DCA 2021)………………………………..12

*Edwards v. State*, 351 So. 3d 1141 (2022)…………………………………………...14, 15

*Garcia v. State*, 286 So. 3d 348 (Fla. 2d DCA 2019)……………………………………..4

*Golden v. State*, 2024 OK CR 16, 552 P.3d 74 (Okla. Crim. App. 2024)………………...4

*In re Guardianship of Browning*, 543 So. 2d 258 (Fla. 2d DCA 1989)…………………12

*Main v. Commonwealth*, 19 Va. App. 272 (1994)……………………………………...5, 6

*People v. Pritchett*, 62 Mich. App. 570, 233 N.W.2d 655 (1975)…………………….8–10

*Thompson v. State*, 257 So. 3d 573 (Fla. 1st DCA 2018)………………………………..13

*State v. Bateman*, 526 S.W.3d 357 (Mo. Ct. App. 2017)……………………………….6, 7

*State v. Cannon*, 341 N.C. 79 (1995)…………………………………………………….16

*State v. Cartwright*, 200 Mont. 91 (1982)………………………………………………..16

*State v. Chavers*, 230 So. 3d 35 (Fla. 4th DCA 2017)…………………………………….4

*State v. Cook*, 286 Kan. 1098 (2008)…………………………………………………….16

*State v. Floyd*, 186 So. 3d 1013 (Fla. 2016)……………………………………………..12

*State v. Foreman*, 957 N.W.2d 38 (Iowa Ct. App. 2021)…………………………………4

*State v. Hicks*, 385 N.C. 52 (2023)………………………………………………………16

*State v. Kirkland*, 276 So. 3d 994 (Fla. 5th DCA 2019)…………………………………..4

*State v. Stone*, 266 Mont. 345 (1994)…………………………………………………….16

*United States v. Atkins*, 16 Fed. Appx. 145 (2001)……………………………………..5, 7

*Wyche v. State*, 170 So. 3d 898 (Fla. 3d DCA 2015)……………………………………...4

*Zelaya v. Commonwealth*, No. 1987-19-4, 2020 Va. App. LEXIS 277

(Ct. App. Nov. 10, 2020)………………………………………………………………….5

**State Statutes**

Ste. Stat. § 776.012 ………………………….………………………………………...12

Ste. Stat. § 776.032 ……………………………………………………………………14

Ste. Stat. § 776.041…………………………………………………………………….15

Ste. Stat. § 776.041(2) …………………………………………………………………12

Ste. Stat. § 776.041(2)(a)…………………………………………………………...….14

Ste. Stat. § 776.041(2)(b)…………………………………………………………...15,16

Ste. Stat. § 777.04……………………………………………………………….. …8–10

Ste. Stat. § 790.01 ……………………………………………………………………....5

Ste. Stat. § 790.01(2) …………………………………………………………………. 11

Ste. Stat. § 790.012……...………………………………………………………………5

**STATEMENT OF THE ISSUES**

1. Under Stetson’s Stand Your Ground law, does the Defendant qualify for immunity when he engaged in the criminal activity of carrying a concealed weapon without a license?
2. Under Stetson’s Stand Your Ground law, does Defendant qualify for immunity when he initiated deadly force against Mr. Wilson?

**INTRODUCTION**

This Court should deny Jay Cameron’s (the “Defendant”) Motion to Dismiss based on Stand Your Ground Immunity. The Defendant engaged in criminal activity– and therefore had a duty to retreat– when he concealed a loaded .40 caliber handgun in his hoodie without a concealed carry permit. And even if the handgun was not actually concealed, the Defendant took overt steps towards the commission of concealment, which amounts to criminal attempt. Furthermore, Defendant confrontation Mr. Wilson on two separate occasions before initiating deadly force against him. What’s more, Defendant was never in imminent danger before commencing gunfire, and withdrew from such force once Mr. Wilson was on the floor with a bullet to his back.

First, the Defendant engaged in criminal activity when he hid his handgun in his hoodie. Even if the Defendant's handgun was partially visible through his hoodie, the Defendant’s placement of the handgun is sufficient to conclude that he concealed it. Regardless of his success, the Defendant’s actions make him guilty of criminal attempt to conceal a weapon without a permit. No matter the reasoning, the Defendant is not entitled to immunity, because he engaged in criminal activity.

Second, the Defendant provoked Mr. Wilson when he approached him on two separate occasions on the morning of August 6, 2022. Even if Mr. Wilson had a history of violence in the community, it was common knowledge amongst the Defendant and his brother that if they left Mr. Wilson alone, they’d be left alone. Yet, Defendant still confronted Mr. Wilson that morning *twice*—entirely unprovoked—before engaging in gunfire in the breezeway. Thus, Defendant is not entitled to immunity, because he was never in imminent danger before he became the initial aggressor.

**STATEMENT OF FACTS**

On the morning of August 6, 2022, Ryan Wilson (the “Victim”), a local resident at the Boals Motel in Petersburg, Stetson, was confronted by the Defendant, a young man with a known history of animosity towards the Victim. R. at 6. Around 9:45 a.m., the Defendant approached the Victim outside his motel room and made a threatening remark, stating his intent to take over the area. R. at 6. The Victim, who was merely sitting outside his room, was surprised by this unprovoked aggression. R. at 57.

The Defendant left but returned approximately 45 minutes later with his brother, Greg Cameron (“Greg”). R. at 20. Upon their return, the Defendant noticed that the Victim was still outside. R. at 20. Rather than de-escalating the situation, the Defendant chose to aggravate it. The Defendant was carrying a loaded .40 caliber handgun, which he concealed in the front pocket of his hoodie. R. at 21. The Defendant alleges that he placed the gun in his hoodie so as not to scare others and that the gun should have been large enough to notice. R. at 21. As he approached the Victim, the Defendant made a threatening gesture with his left hand, simulating a gun and saying, “Pop pop.” R. at 21.

As the Defendant continued towards the breezeway, where the Victim stood, a confrontation ensued. R. at 47. Contrary to the Defendant’s later claims of self-defense, witnesses indicated that Cameron fired first. R. at 22, 47. The Victim, who had not brandished his own firearm or shown aggression, was struck by bullets fired by the Defendant, sustaining serious injuries to his chest and back. R. at 43, 48, 60. A witness, Kenny Gray (“Gray”), confirmed that the Victim remained passive, observing the Defendant’s actions with concern. R. at 47. The Victim was standing near the corner of the breezeway when the Defendant opened fire. R. at 48. The Defendant’s bullets struck the Victim in the upper left chest and lower back as he tried to retreat. R. at 48. The Victim tried to flee, but the Defendant fired a second shot that struck him in the back, causing the Victim to collapse near the breezeway entrance. R. at 48, 60-61. When the victim hit the ground he dropped his weapon and lost consciousness. R. at 61.

As the shots rang out, chaos erupted in the parking lot. Gray, positioned near the white and silver SUV, immediately sought cover behind the vehicle as the gunfire continued. R. at 49, 52. Another individual, identified as Tony D., had been sitting nearby but quickly stood up and ran away when the shooting began. R. at 49. The Defendant’s brother, who had been walking behind Jay, crouched near a car, but he later helped retrieve Wilson’s gun from the ground after Wilson had been shot. R. at 36-38, 40.

After the shooting, instead of offering assistance to the Victim or explaining his actions, the Defendant fled the scene with his brother, taking the Victim’s firearm with them. R. at 38-39, 50. In fact, before the Defendant sought medical attention, he stopped at his motel room and stashed the guns away from sight. R. at 13, 38. The Defendant then fled to another county, far from the scene of the crime, to receive medical attention. R. at 38.

More than just witness testimony, surveillance footage from the Boals Motel captured Cameron’s aggressive approach and the shooting, showing a clear escalation initiated by Cameron. R. at 16. While some footage was lost due to camera damage during the incident, the available video clearly shows Cameron’s movements and his role in provoking the conflict. R. at 10. At the time of the incident, the Defendant did not have a concealed carry license. R. at 4.

**ARGUMENT**

1. **THIS COURT SHOULD DENY THE DEFENDANT’S MOTION TO DISMISS­–AN INDIVIDUAL HAS A DUTY TO RETREAT AND MAY NOT STAND THEIR GROUND WHEN ENGAGED IN A CRIMINAL ACTIVITY.**

Stetson law provides that an individual has “a duty to retreat” and may not “stand [their] ground” if they are engaged in a “criminal activity.” Ste. Stat. § 776.012 (2024). Even where a defendant is unable to withdraw from conflict, the minimum requirement of the duty to retreat requires a defendant to clearly indicate that they would like to withdraw from conflict. *See* *Wyche v. State*, 170 So. 3d 898, 907 (Fla. 3d DCA 2015). When engaged in criminal activity, a defendant must use “all reasonable means in [their] power . . . before [their] use of deadly force will be justified.” *Garcia v. State*, 286 So. 3d 348, 351 (Fla. 2d DCA 2019). Courts nationwide consistently hold that when a defendant uses deadly or non-deadly force in violation of firearm regulations, they must prove they were not engaged in criminal activity. *See* *e.g.* *State v. Chavers*, 230 So. 3d 35 (Fla. 4th DCA 2017) (permit less carry of a concealed firearm in Florida); *State v. Foreman*, 957 N.W.2d 38 (Iowa Ct. App. 2021) (illegal possession of a firearm in Iowa); *Golden v. State*, 2024 OK CR 16, 552 P.3d 74 (misdemeanor offense of carrying a firearm in Oklahoma). However, when the facts show that a defendant illegally possessed a weapon, this possession constitutes criminal activity. *See State v. Kirkland*, 276 So. 3d 994, 997 (Fla. 5th DCA 2019) (holding that a defendant engaged in criminal activity and was not entitled to stand your ground immunity, when the defendant violated an open carry law).

1. **THE DEFENDANT HAD A DUTY TO RETREAT WHEN HE COMMITTED A FELONY BY CONCEALING HIS SEMI-AUTOMATIC HANDGUN.**

When the Defendant placed his firearm in the front pocket of his hoodie, he violated Stetson General Statute § 790.01. Stetson law provides that “[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.” § 776.012 (2024). However, concealment does not require “absolute invisibility” *Main v. Commonwealth*, 19 Va. App. 272, 276 (1994). Instead, courts have determined that a weapon is concealed when it is hidden from common observation and is only visible through exceptional opportunities to view the weapon. *See e.g. United States v. Atkins*, 16 Fed. Appx. 145, 148 (2001) (where a weapon partially visible under the passenger seat of a car was not commonly visible); *Zelaya v. Commonwealth*, No. 1987-19-4, 2020 Va. App. LEXIS 277, \*15-16 (Ct. App. Nov. 10, 2020) (where a weapon in the defendant’s waistband required exceptional opportunities to view).

Even where a weapon is partially visible to others, conduct alone is sufficient to conclude that a defendant concealed a weapon. *See State v. Bateman*, 526 S.W.3d 357, 360 (Mo. Ct. App. 2017). In *Bateman* an officer noticed a “very distinct” outline of a firearm below the waistline of the defendant. *Id.* at 358-59. The defendant did not have a concealed carry permit, yet they had fully concealed a firearm in their pants. *Id.* The court concluded that the being able to discern by ordinary observation the outline of a firearm under clothing is not the equivalent of seeing the actual firearm itself. *Id.* at 359. Instead, the court concluded that carrying a weapon beneath clothing is adequate evidence to establish the crime of concealment. *Id.* at 360.

Here, the parties stipulate that the Defendant did not have a concealed carry license at the time of the incident. R. at 4. The only issue is whether the Defendant’s weapon was concealed at the time of the crime. If the Defendant’s weapon was concealed then he violated Stetson’s concealed carry law. Although absolute invisibility is not the standard for concealed weapons, the Defendant’s weapons was entirely hidden from sight. *See Main*, 19 Va. App. at 276. The record does not show that anyone ever actually saw the Defendant’s weapon. In fact, witnesses like Gray only observed the Defendant placing what appeared to be a black object into his hoodie pocket, but no one definitively identified it as a firearm. R. at 47. This lack of visibility aligns with the reasoning in *Bateman*, where the court found that a weapon can be considered concealed even if it is not fully invisible but merely hidden from ordinary observation. *See Bateman*, 526 S.W.3d at 360.

The Defendant's weapon was placed in his hoodie pocket, obscured from view, and was not visible to those around him except under exceptional circumstances, such as when the Defendant himself made a subtle gesture suggesting its presence. R. at 21. The Defendant even testified that he placed the gun in his hoodie so that “other people” would not see the weapon. R. at 21*.* So, the Defendant admits that he placed the weapon in a place where it would be difficult for an ordinary observer to spot it. If the Defendant did not expect “other people” to see the weapon he was hiding, surely, he could not have expected the victim to see the weapon. The Defendant acknowledged as much, when he testified to having imitated the shape of a gun with his left hand. R. at 21.In the Defendant’s own words, “I used my left hand to make the shape of a gun as I was walking and I said, ‘Pop pop’ so that [the victim] would know I was armed and not to mess with me.” R. at 21. However, the test for concealed weapons is not based on the verbal or nonverbal warnings from a defendant, it is based on what is “commonly visible.” *See Atkins*, 16 Fed. Appx. at 148. Gray, a witness to the crime, did not even understand what the Defendant’s signals meant. R. at 47.

Furthermore, the Defendant’s argument that his gun “isn’t exactly small,” is irrelevant to the analysis for concealed weapons. R. at 21. As *Bateman* clarified, a weapon may be concealed even if its outline is “very distinct.” *See Bateman*, 526 S.W.3d at 360. Gray stated that it “looked like [the Defendant] was holding a weapon,” and that the weapon was “probably a gun,” but the fact remains that no one ever saw the gun. R. at 47.

1. **EVEN IF CAMERON FAILED TO CONCEAL HIS SEMI-AUTOMATIC HANDGUN, HIS ATTEMPT TO DO SO CONSTITUTES A CRIMINAL OFFENSE AND DISQUALIFIED HIM FROM THE RIGHT TO STAND HIS GROUND.**

When the Defendant placed his firearm in his hoodie, he violated Stetson General Statute § 790.0. Stetson law defines criminal attempt as an “attempt[] to commit an offense prohibited by law.” § 777.04 (2024). To establish the crime of criminal attempt, the State must prove that a defendant “intended to commit a crime, committed an overt act towards its commission, and failed to successfully complete the crime.” *Carlton v. State*, 103 So. 3d 937, 939 (Fla. 5th DCA 2012). The Supreme Court of Florida clarified that criminal attempt consists of a “specific criminal intent to commit the crime and an overt act beyond preparation toward that end.” *Adams v. Murphy*, 394 So. 2d 411, 413 (Fla. 1981).

When applied to firearm concealment, the intent element of criminal attempt statutes focuses on whether the placement of a firearm was intentional. *See Barley v. Commonwealth*, Record No. 0117-00-3, 2000 Va. App. LEXIS 765, \*6 (Ct. App. Nov. 28, 2000). In *Barley*, the defendant testified that the weapon in his car could not have fallen from the console to beneath the jacket where it was found, and no evidence suggested that anyone else placed it there. *Id.* at \*5-\*6. Without addressing the defendant’s mental state, the court concluded that the defendant’s intentional placement of the weapon was sufficient to prove intent to conceal. *Id.* at \*6.

Further, as applied to concealed weapons, criminal attempt statutes do not evaluate a defendant’s reasons for concealing a weapon. *See People v. Pritchett*, 62 Mich. App. 570, 233 N.W.2d 655, 575 (1975). In *Pritchett* the defendantalleged that he placed a partially visible sawed-off shotgun beneath his coat for the purpose of freeing his hands to place them in his pockets for warmth. *Id.* at 571-72. The court dismissed his excuse and held that the placement of the shotgun beneath his coat and the shotgun’s partial visibility provided sufficient evidence to prove criminal attempt to conceal a weapon. *Id.* at 575.

Here, the Defendant’s deliberate act of placing his firearm into his hoodie pocket not only demonstrates an intent to conceal but also constitutes a substantial step towards the completion of the crime of concealment. *See Adams* 394 So. 2d at 413. This action, taken in the context of the Defendant's broader behavior, cannot be seen as merely incidental or without consequence. Rather, it is a clear manifestation of his intent to hide the weapon from public view, which, even if not fully successful, constitutes a criminal attempt under Stetson General Statute § 777.04. *See Carlton* 103 So. 3d at 939.

The Defendant’s argument that he signaled to the victim to show that he was armed is belied by the facts. R. at 21. If the Defendant’s true intent was to openly display the firearm to deter aggression, he would have had no reason to place it in his pocket, where it was obscured from view. Instead, he would have openly carried the weapon in a manner that made it unmistakable to anyone nearby. By placing the firearm in his pocket, the Defendant took a deliberate step to ensure that the weapon was not readily visible, and therefore he took an overt act towards the commission of a crime. *See Adams* 394 So. 2d at 413.

Witness testimony further supports this conclusion. Gray, a witness to the crime, stated that up until the shooting he never saw the weapon carried by the Defendant. R. at 47. Although Gray could not definitively identify the object as a firearm, the implication was clear: the Defendant was attempting to obscure the weapon from view. This aligns with the principle established in *Barley*, where the intentional placement of a weapon in a concealed manner was sufficient to establish criminal attempt. Moreover, even the Defendant’s brother attests that the Defendant never showed the weapon he was carrying. R. at 33-34. Here, the Defendant’s decision to place the gun in his pocket, rather than leaving it in plain sight, constitutes an overt act towards the concealment of the weapon. *See Adams* 394 So. 2d at 413.

Whereas intent is an integral element of criminal attempt statutes, the Defendant’s conduct leading up to and during the incident underscores his intent to conceal the firearm. *See Barley*, Record No. 0117-00-3, 2000 Va. App. LEXIS at \*6. As per the Defendant’s own testimony, he made the intentional choice to place the weapon in the front pocket of his hoodie. R. at 21. As in *Barley*, where the defendant’s choice to conceal the weapon under a jacket amounted to criminal attempt, here the Defendant’s choice to put his weapon under a hoodie amounts to criminal attempt. *See Pritchett*, 62 Mich. App. at 575.

Further, instead of openly displaying the weapon, the Defendant chose to imitate the shape of a gun with his fingers and make a vague ‘Pop pop’ sound to indicate that he was armed. R. at 21. This behavior is consistent with an attempt to keep the firearm hidden from ordinary observation, rather than an effort to make it known. Despite the Defendant’s contention that he thought the victim would know he was armed, the Defendant’s reasons for hiding the weapon are irrelevant. R. at 21. The situation here is like the situation in *Pritchett*, where the defendant argued that he had concealed a sawed-off shotgun for reasons unrelated to committing a crime. *See Pritchett*, 62 Mich. App. at 575. Similarly, in this case, the Defendant’s claim that he was attempting to let others know he had a gun does not negate the fact that he deliberately placed the firearm in his hoodie pocket, effectively concealing it. The Defendant’s subjective reasoning is irrelevant to the determination of criminal attempt; what matters is the objective evidence of his actions, which clearly show an intent to conceal the weapon.

Therefore, the Defendant’s conduct constitutes a criminal attempt to conceal the firearm in violation of Stetson General Statute § 777.04. This attempt to conceal, even if ultimately unsuccessful, disqualifies the Defendant from invoking the Stand Your Ground defense. The law is clear that a person engaged in criminal activity cannot claim the protection of this defense, and the Defendant’s actions on the day in question amount to criminal attempt.

1. **DEFENDANT VIOLATED STETSON GENERAL STATUTE § 790.01(2) WHEN HE CARRIED A CONCEALED WEAPON AT BOALS MOTEL.**

The plain language of Stetson General Statute section 790.01(2) evinces that the actions taken by Defendant on August 6, 2022, violated his statutory right to carry a concealed firearm on his person. Notably, Defendant did not have a concealed carry license on that date. R. at 4. What’s more, the actions taken by Defendant do not grant him immunity from criminal prosecution because there was no justifiable use for the deadly force that he took upon Ray Cameron that afternoon. Thus, Defendant is not entitled to immunity from further prosecution.

* 1. **DEFENDANT WAS THE INITIAL AGGRESSOR AND DOES NOT HAVE IMMUNITY FOR VIOLATING § 790.01(2).**

A person may not invoke the right to stand their ground unless they are attacked. *State v. Floyd*, 186 So. 3d 1013, 1020 (Fla. 2016). Invoking this right is determined by who the initial aggressor is, specifically, who initially provokes the use of force. *Id.* at 1014. Under Stetson law, the prosecution bears the burden to proof by clear and convincing evidence. Evidence is clear and convincing when the truth of the facts asserted is highly probable. *See Cummings v. State*, 310 So. 3d 155, 258-59 (Fla. 2d DCA 2021). Even then, “it is possible for the evidence in such a case to be clear and convincing, even though some evidence may be inconsistent. Likewise, it is possible for the evidence to be uncontroverted, and yet not be clear and convincing.” (quoting *In re Guardianship of Browning*, 543 So. 2d 258, 273 (Fla. 2d DCA 1989)).

In order for an individual to have immunity from criminal prosecution for justifiable use or threatened use of force, it must be permitted under Stetson’s Stand Your Ground statute, which states that “[a] person is justified in using or threatening to use deadly force if he or she reasonably believes that using . . . such force is necessary to prevent imminent death or great bodily harm.” Ste. Stat. § 766.012 (2024). However, justification is not found when an individual is theaggressor and initially provokes the use or threatened use of force against himself or herself. *See* Ste. Stat. §776.041(2) (2024).

In determining the initial aggressor, courts have recognized confrontation to qualify. *See Thompson v. State*, 257 So. 3d 573, 581 (Fla. 1st DCA 2018). In *Thompson*, the court analyzed two altercations between an individual, Halley, and the defendant to determine who the initial aggressor was. *Id.* The Court first found Halley to be the initial aggressor of the first altercation because he confronted Thompson “about adding spices to the gumbo and was first to lay hands on [the defendant].” This altercation ended and the defendant left to retrieve a sword, in which the court concluded that the threat to the defendant was over by the time that he armed himself with the sword. So, the court found him to be the initial aggressor during the second altercation. *Id.*; *see also Cruz v. State*, 189 So. 3d 822, 827 (Fla. 4th DCA 2015).

Here, the Defendant provoked the Victim on two separate occasions. The Defendant began his morning by walking past the Victim’s room to tell him that “[t]his will be my turf soon.” R. at 6. Following this, he walked past the Victim’s room about 45 minutes later with his right hand in his front pocket and stated “Pop pop – you’re done” to the Victim before entering the alleyway. R. at 6. At no point did the Victim start the altercation or threatening conversation with the Defendant. Therefore, under *Thompson’s* reasoning, Defendant was the initial aggressor on *both* occasions because he, with no provocation, confronted the Victim with threats of violence.

**i.** **Defendant Was Not In Imminent Danger**

An individual can be the initial aggressor and have justifiably used deadly force, thus granting them immunity, if

[s]uch force or threat of force is so great that the person reasonably believes that he . . . is in imminent danger of death or great bodily harm and that he . . . has exhausted every reasonable means to escape such danger other than the use or threatened use of force which is likely to cause death or great bodily harm to the assailant.

Ste. Stat. § 776.041(2)(a) (2024). Stetson law places large emphasis on who can stand their ground, and here, Defendant was not in imminent danger to justify the level of force that would grant him immunity under Ste. Stat. § 776.032 (2024).

Facts must be weighed under a reasonable interpretation to interpret a claim on whether an individual was in imminent danger of great bodily harm. *Edwards v. State*, 351 So. 3d 1141, 1153 (2022). In *Edwards*, the defendant shot his stepson after engaging in a mutual combat. *Id.* at 1153. The court, in its reasoning, stated that the defendant’s stepson “was no stranger to [the defendant] . . . [the defendant] knew his stepson’s behaviors and tendencies.” *Id.* at 1156. Thus, the court, on appeal, upheld the trial court’s finding that the State met its burden to show that it was not objectively reasonable for Edwards to believe that he was in imminent danger of great bodily harm or death when he used deadly force. *Id.* at 1151.

Although Defendant alleges that the Victim told him “[y]ou’re a dead man walking,” R. at 20, this was the Victim running his “big mouth” and saying “[n]ormal crap,” as per the Defendant’s own brother. R. at 29. In fact, the Defendant’s brother notes that the Victim is “always talking smack and threatening people,” and while he does “make good on it” occasionally, nothing suggests that this is outside of this normal dialogue. R. at 29-30. This is indicated by the Defendant’s brother saying that the morning started off with the Victim saying, “this is my turf, just keep walking, you don’t want to get hurt,” and the Defendant ignoring him “like he always does.” R. at 32. Just like the defendant in *Edwards*, the Victim’s open threats are not new to the Defendant and the Defendant has a history of just ignoring them. *See Edwards*, 351 So. at 1156; R. at 32. Thus, nothing from that morning’s events indicate that Defendant was in imminent danger on August 6, 2022. Specifically, imminent danger that would call for him to “reasonably believe[] that he . . . [was] in imminent danger of death or great bodily hard and that he had exhausted *every reasonable means* to escape such danger. Ste. Stat. § 766.041 (emphasis added). Thus, a reasonably prudent person in the same position would not have believed that the use of deadly force was necessary to prevent imminent death or great bodily harm. *Edwards*, 351 So. at 1156.

**ii.** **Defendant Never Withdrew From Physical Contact With The Victim Until The Victim Was On The Ground**

Under Ste. Stat. § 776.041(2)(b), “[i]n good faith, the person withdraws from physical contact with the assailant and indicates clearly to the assailant that he or she desires to withdraw and terminate the use or threatened use of force, but the assailant continues or resumes the use or threatened use of force.” The opposite is true, a defendant is not entitled to a self-defense claim when they make no attempt to escape or withdraw from contact. *State v. Cook*, 286 Kan. 1098, 1099 (2008); *see also State v. Stone*, 266 Mont. 345, 347 (1994).

In *State v. Cartwright*, the Montana Supreme Court held that the defendant did not withdraw from the conflict in good faith. *State v. Cartwright*, 200 Mont. 91, 103 (1982). The court noted that after shooting the victim, the defendant continued to engage in aggressive actions, which were not indicative of an intent to withdraw. *Id.* Similarly here, the Defendant continued to engage in aggressive actions and withdrew from physical contact only *after* shooting Defendant in the back. R. at 23. Further, courts have scrutinized this immunity when the defendant shoots someone in the back. *State v. Hicks*, 385 N.C. 52, 60 (2023); *see also State v. Cannon*, 341 N.C. 79, 83 (1995). In *Hicks*, the court noted that a victim being shot in the back could support an inference that the victim was trying to leave, which is a factor that may be considered in evaluating a self-defense claim. 385 N.C. at 60; *see also State v. Cannon*, 341 N.C. 79, 83 (1995). Thus, while the Defendant withdrew from contact, he never made it “clear to the [Victim] that he [] desires to withdraw and terminate the use . . . of force, he only withdrew once the Victim was shot in the back, dropped his gun, and was one the floor. R. at 23, 36; Ste. Stat. § 776.041(2)(b).

In sum, had Defendant’s actions followed a qualified immunity under Stetson’s stand your ground law, he would have been granted it. However, Defendant was never in imminent danger, nor did he withdraw contact with the Victim before engaging in deadly force.

**CONCLUSION**

This Court should deny the Defendant’s Motion to Dismiss based on Stand Your Ground Immunity. The Defendant’s motion is meritless given the substantial evidence demonstrating his intent to conceal his weapon despite not having a concealed carry permit. Defendant’s Stand Your Ground claim is also meritless. Due to him being the initial aggressor, creating the imminent danger, and failing to withdraw until the harm was over, Defendant does not qualify for Stand Your Ground immunity.

WHEREFORE, the Prosecution respectfully requests that this Court deny Defendant’s Motion to Dismiss and grant the Prosecution all other relief this Court deems just and proper.

Dated September 1st, 2024

**INTEGRITY CERTIFICATION**

See Appendix 1.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing was delivered via electronic mail by 5:00 p.m. EST on September 1, 2024, to nptc@law.stetson.edu.