Case No. 2024-CR-319

**IN THE**

**DISTRICT COURT OF THE STATE OF STETSON**

**COUNTY OF PINELLA**

The State of Stetson

v.

Jay Cameron,

*Defendant.*

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

/s/ 120

*Attorneys for the State of Stetson*

**TABLE OF CONTENTS**

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ii

INTRODUCTION 1

STATEMENT OF FACTS 2

ARGUMENT 4

1. This Court should deny Defendant’s Motion to Dismiss––Defendant had no right to stand his ground because he was engaged in criminal activity at the time of the shooting 4
2. Since Defendant was unlawfully carrying a concealed firearm without a license, he had a duty to retreat before resorting to deadly force 5
3. By holding his handgun within the front pocket of his sweatshirt, Defendant carried the firearm in a manner so as to conceal its presence from casual and ordinary observation 6
4. Defendant’s intent while carrying his handgun is of no consequence to this Court’s determination of whether it was concealed 9
5. This Court should deny Defendant’s Motion to Dismiss because he, as the aggressor, forfeited his right to stand his ground 11
6. Defendant was the aggressor because he initially provoked the use of deadly force by threatening Ryan Wilson and indicating that he was armed 12
7. Defendant cannot justify his aggressor status because he could not have reasonably believed he was in imminent danger of great bodily harm and failed to exhaust every reasonable means of escape 14
8. Defendant made no attempt to clearly indicate his desire to withdraw from the altercation nor terminate the use of force 17

CONCLUSION 18

**TABLE OF AUTHORITIES**

**Cases** *Page(s)*

*Avery v. Commonwealth*,

3 S.W.2d 624 (Ky. 1928) 9

*Bellcourt v. State*,

390 N.W.2d 269 (Minn. 1986) 17

*Dawkins v. State*,

252 P.3d 214 (Okla. Crim. App. 2011) 5

*Dorelus v. State*,

747 So. 2d 368 (Fla. 1999) 6–9

*Dorsey v. State*,

74 So. 3d 521 (Fla. 4th Dist. Ct. App. 2011) 5

*Edwards v. Att’y Gen., Ala.*,

No. 19-13739-G, 2020 WL 1540405 (11th Cir. Mar. 6, 2020) 12

*Edwards v. Marshall*,

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

*Ensor v. State*,

403 So. 2d 349 (Fla. 1981) 6

*Ex parte Johnson*,

No. SC-2023-0251, 2023 WL 8658886 (Ala. Dec. 15, 2023) 13

*Gaines v. State*,

137 So. 3d 357 (Ala. Crim. App. 2013) 13

*Garcia v. State*,

286 So. 3d 348 (Fla. 2d Dist. Ct. App. 2019) 14

*Linsley v. State*,

101 So. 273 (Fla. 1924) 5

*McMillen v. United States*,

407 A.2d 603 (D.C. 1979) 9

*Menard v. Fla. Att’y Gen.*,

No. 2:16-CV-854-FtM-29NPM, 2020 WL 2559753 (M.D. Fla. May 20, 2020) 14–15

*Mobley v. State*,

132 So. 3d 1160 (Fla. 3d Dist. Ct. App. 2014) 14

*Parker v. State*,

7 So. 98 (Ala. 1890) 17

*People v. Charron*,

220 N.W.2d 216 (Mich. Ct. App. 1974) 11

*People v. Combs*,

408 N.W.2d 420 (Mich. Ct. App. 1987) 10

*Robertson v. State*,

704 A.2d 267 (Del. 1997) 9

*Rowe v. United States*,

164 U.S. 546 (1896) 17

*Schmuck v. State*,

406 P.3d 286 (Wyo. 2017) 17

*Smith v. State*,

387 So. 3d 495 (Fla. 1st Dist. Ct. App. 2024) 16

*State v. Bateman*,

526 S.W.3d 357, (Mo. Ct. App. 2017) 8

*State v. Craig*,

514 P.2d 151 (Wash. 1973) (en banc) 17–18

*State v. Gwinn*,

390 A.2d 479 (Me. 1978) 6

*State v. Hinkle*,

970 So. 2d 433 (Fla. 4th Dist. Ct. App. 2007) 10

*State v. Lawrence*,

638 S.W.2d 780 (Mo. Ct. App. 1982) 11

*State v. Murphy*,

610 S.W.2d 382 (Mo. Ct. App. 1980) 6–8

*State v. Nichols*,

No. 01CA2775, 2002 WL 126973 (Ohio Ct. App. Jan. 22, 2002) 13

*State v. Ruff*,

211 P.3d 277 (Or. Ct. App. 2009) 8

*State v. Suber*,

694 N.E.2d 98 (Ohio Ct. App. 1997) 6

*United States v. Archer*,

531 F.3d 1347 (11th Cir. 2008) 10

*United States v. Peterson*,

483 F.2d 1222 (D.C. Cir. 1973) 15

*United States v. Rico*,

3 F.4th 1236 (10th Cir. 2021) 12

*Weiand v. State*,

732 So. 2d 1044 (Fla. 1999) 5

*Wolfram v. State*,

568 So. 2d 992 (Fla. 5th Dist. Ct. App. 1990) 10

**Statutory Provisions**

Stet. Gen. Stat. § 776.012 4, 11

Stet. Gen. Stat. § 776.041 11

Stet. Gen. Stat. § 776.041(2)(a) 14

Stet. Gen. Stat. § 790.01(2) 5–6

**INTRODUCTION**

This Court should deny Defendant’s Motion to Dismiss because he does not qualify for Stand Your Ground Immunity under § 776.012 of the Stetson General Statutes. Jay Cameron (Defendant) had no right to stand his ground when using deadly force because he was engaged in criminal activity at the time of the shooting; thus, his failure to retreat rendered his use of force unjustified. And even if Defendant was not then engaged in criminal activity, he still had a duty to retreat prior to using deadly force because he initially provoked the attack.

First, Defendant had no right to stand his ground because he was engaged in criminal activity at the time of the shooting by unlawfully carrying a concealed firearm without a license. Defendant has admitted that he was not then licensed to carry concealed firearms; and his firearm was indeed concealed because––by holding the handgun within the front pocket of his sweatshirt––he was carrying it in a manner so as to conceal its existence from ordinary observation.

Next, Defendant had a duty to retreat because he was the aggressor; he initially provoked the attack by verbally threatening Ryan Wilson and indicating that he was armed. Additionally, Defendant could not have reasonably believed that he was in imminent danger simply because Ryan Wilson did not inflict any physical force upon Defendant before the shooting. Defendant also never withdrew in good faith prior to inflicting deadly force, nor did he indicate any such desire to withdraw. Finally, Defendant failed to exhaust his reasonable means to escape the conflict. Therefore, Defendant’s use of deadly force was unjustified, and he does not qualify for Stand Your Ground Immunity.

**STATEMENT OF FACTS**

***The initial encounter.*** On August 6, 2022, Ryan Wilson was staying at the Boals Motel here in Petersburg, Stetson. (CF at 56). That morning, Wilson awoke around 8:00AM to his girlfriend bringing him a cup of coffee. (CF at 56). As they talked over coffee, Wilson was completely unaware that the man who would soon fire two .40 caliber bullets through his torso was staying at the same motel. (CF at 56); (Ex. 10). Around 9:30 AM, Wilson’s girlfriend left to go to work; and for about the next fifteen minutes, Wilson socialized with his friends in the front porch area of his motel room. (CF at 56); *see* (Ex. 8).

It was then that Wilson first encountered Defendant. (CF at 56–57). Although Wilson had never interacted with Defendant before that day, he did know of him, simply because he too was a regular customer of the Boals Motel––and was always “watching [Wilson] from afar.” (CF at 46, 57). As Wilson was sitting there with his friends, Defendant strutted past them and proclaimed, “This will be my turf soon.” (CF at 57). Taken aback, Wilson asked, “Are you threatening me?” (CF at 45–46). To which, Defendant clarified, “Hell yes––just wait.” (CF at 46). Despite this tense exchange, the two went their separate ways: Defendant walked out of the parking lot, and Wilson went inside his motel room to use the restroom. (CF at 20, 46, 57). Moments later, Wilson stepped back onto the front porch, stuffing his cell phone into his right pocket. (CF at 46, 57); (Ex. 13). And for the next forty-five minutes, there was peace at the Boals Motel. (CF at 58).

***The attack.*** At about 10:30AM, Defendant returned; and to Wilson, “it was obvious he was looking to start a fight.” (CF at 58). Despite being “on edge,” Wilson “didn’t move a muscle” as Defendant rapidly approached him wearing a sweatshirt with the hood pulled over his head and “tied tight around his face.” (CF at 47, 58–59). In the front pocket of his sweatshirt, Defendant clutched a “large .40 caliber” handgun with his right hand. (CF at 21). While it crossed the minds of Wilson and his friend, Kenny Gray, that the object could have been a firearm, neither of them could see any part of the weapon itself. (CF at 47, 58–59).

Prior to Defendant turning the corner and entering the adjacent breezeway, he formed his off hand into the shape of a pistol and blurted, “[P]op pop––you’re done.” (CF at 47). Defendant then gave Wilson a “real hard stare.” (CF at 59). In response, Wilson threw up his arms as if to ask, “[W]hat do you want?” (CF at 59); (Ex. 8). Maintaining his glare, Defendant held a fist up to his throat and made “a quick sliding motion with [h]is thumb across his neck.” (CF at 59–60). Naturally, Wilson interpreted this as a threat upon his life. (CF at 60). Still, Wilson remained stationary until Defendant had disappeared around the corner. (CF at 60). Wilson’s friend, Tony, then handed Wilson a pistol. (CF at 60). To ensure that he was no longer in danger, Wilson cautiously peeked around the corner of his motel room that stood between him and the breezeway. (CF at 60); (Ex. 8). To Wilson’s dismay, he found that not only was Defendant still in the breezeway, but that he had turned back around toward Wilson, drawn his pistol, and taken the first shot. (CF at 60); (Ex. 8).

Upon Defendant’s initial bullet entering Wilson’s upper left chest, Wilson returned fire. (CF at 60); (Ex. 10). Defendant, however, kept coming toward Wilson as he backed away from Defendant. (CF at 60). Panicking, Wilson then turned and ran away from Defendant but tripped and fell to the ground, dropping his pistol. (CF at 60). And as Wilson stumbled, Defendant fired a second shot into Wilson’s back. (CF at 61); (Ex. 10).

**ARGUMENT**

1. **This Court should deny Defendant’s Motion to Dismiss––Defendant had no right to stand his ground because he was engaged in criminal activity at the time of the shooting.**

In Stetson, a person is justified in resorting to deadly force if they reasonably believe that such force “is necessary to prevent imminent death or great bodily harm . . . or to prevent the imminent commission of a forcible felony.” Stet. Gen. Stat. § 776.012. Yet if they are “engaged in a criminal activity” at the time of using such force, they have no right to stand their ground; instead, they “have a duty to retreat.” Stet. Gen. Stat. § 776.012. Meaning, a defendant that uses deadly force can only be immune from prosecution if––prior to using such force––they had “used all reasonable means in [their] power, consistent with [their] own safety, to avoid the danger and to avert the necessity of taking human life.” *Linsley v. State*, 101 So. 273, 275 (Fla. 1924). Regardless of a defendant’s reasonable belief that deadly force is immediately necessary, if they are engaged in criminal activity, deadly force is unjustified unless they first attempt to flee the danger. *Weiand v. State*, 732 So. 2d 1044, 1049 (Fla. 1999). This principle emanates from the idea that the right to stand one’s ground should be reserved for “regular, law-abiding citizens[.]” *Dawkins v. State*, 252 P.3d 214, 218 (Okla. Crim. App. 2011).

* 1. **Since Defendant was unlawfully carrying a concealed firearm without a license, he had a duty to retreat before resorting to deadly force.**

In 2022, the year in which Defendant inflicted deadly force against Ryan Wilson, the Stetson State Legislature then criminalized the unlicensed carry of concealed firearms. *See* Stet. Gen. Stat. § 790.01(2) (providing that such conduct was a third-degree felony); (CF at 4). Consequently, if a defendant was in violation of this statute upon being attacked, they would have no right to stand their ground. *See Dorsey v. State*, 74 So. 3d 521, 527 (Fla. 4th Dist. Ct. App. 2011) (noting that because the defendant was engaged in criminal activity by carrying a concealed firearm, “the common law duty to retreat still applie[d]”). Defendant has stipulated that he lacked a concealed carry license at the time of the shooting. (CF at 4).

* + 1. **By holding his handgun within the front pocket of his sweatshirt, Defendant carried the firearm in a manner so as to conceal its presence from casual and ordinary observation.**

A person carries a concealed firearm if they carry it “in a manner designed to conceal the existence of the firearm from the ordinary sight of another person.” Stet. Gen. Stat. § 790.01(2). Generally, courts define “ordinary sight of another person” as “the casual and ordinary observation of another in the normal associations of life.” *Ensor v. State*, 403 So. 2d 349, 354 (Fla. 1981). And with this definition, a weapon need not be absolutely invisible to be “hidden from ordinary observation.” *Id.* This is because––at least under concealed firearm statutes like Stetson’s––a weapon’s concealment does not depend on its *exposure* to onlookers, but on the *manner* in which it is carried. *Dorelus v. State*, 747 So. 2d 368, 371 (Fla. 1999).

Accordingly, even if there is “some notice” of a weapon’s presence, its carrier will still violate the concealed carry statute if they carry it “in such a way as to escape notice by anyone only casually observing” them. *State v. Gwinn*, 390 A.2d 479, 482 (Me. 1978); *see State v. Suber*, 694 N.E.2d 98, 102 (Ohio Ct. App. 1997) (“[A] single gun can be both ‘in plain view’ for purposes of search and seizure, and ‘concealed’ for purposes of sustaining a conviction for carrying a concealed weapon.”).

The case of *State v. Murphy* is illustrative. 610 S.W.2d 382 (Mo. Ct. App. 1980). There, the defendant held a pistol in the front, right-hand pocket of his jacket; and upon seeing the brown handle of what he knew to be a firearm, a patrolling officer arrested the defendant for carrying a concealed weapon. *Id.* at 383–84. On appeal, the defendant argued that the prosecution had failed to present sufficient evidence that his handgun was concealed since the arresting officer “saw and immediately recognized the pistol protruding from appellant’s pocket[.]” *Id.* at 384. Unpersuaded, the appellate court held that, since a weapon can be “partially concealed” and still be carried so as to be undiscernible by ordinary observation, there was sufficient evidence that he carried a concealed firearm. *Id.*

Here, Defendant similarly held a handgun in the front pocket of his sweatshirt. (CF at 21). Unlike the partially concealed pistol in *Murphy*, however, there is no evidence that Defendant’s gun was anything but fully concealed inside his hoodie pocket. Therefore, for the same reason that a jury found, beyond a reasonable doubt, that a *partially* covered pistol in a jacket pocket was concealed, this Court should find that Defendant’s *fully* covered pistol in his jacket pocket was concealed. *Murphy*, 610 S.W.2d at 384.

Nevertheless, Defendant could argue that his “large .40 caliber” pistol was simply too big to be concealed from ordinary observation in the front pocket of his hoodie. (CF at 21). To be sure, the size of the weapon can be a relevant factor in a court’s concealed weapon analysis. *Dorelus*, 747 So. 2d at 372 (recognizing that courts may “consider the nature and type of weapon involved” since large weapons “are by their very nature more easily observable than smaller weapons”). But even large or unwieldy weapons can be “carried in such a manner [so] as to [be] conceal[ed] from ordinary sight.” *Id.* (emphasis omitted); *see e.g.*, *State v. Bateman*, 526 S.W.3d 357, 359–60 (Mo. Ct. App. 2017) (finding that a defendant had concealed his “large firearm with an extended magazine” after he “stuffed . . . [it] into the waistband of his pants and put his shirt over the portion that stuck up above the waistband”––and to hold otherwise would have been “an absurd result”); *State v. Ruff*, 211 P.3d 277, 278–79, 282 (Or. Ct. App. 2009) (concluding that a “samurai type sword” between three-and-a-half feet and four feet long was “capable of being hidden from view” under the defendant’s coat, and that the concealed weapon statute was written “without regard to whether the object is relatively small or large”).

In *Murphy*, the defendant similarly argued that his “.357-magnum revolver . . . was too large to be concealed in his jacket pocket[,]” but the court found that the pistol’s size simply did not change the fact that it was carried in a way so as to avoid detection. *Murphy*, 610 S.W.2d at 384. Thus, while Defendant’s pistol was indeed large, there can be no doubt that by burying it within the front pocket of his sweatshirt, he carried it in a manner so as to conceal it from ordinary observation. (CF at 21).

While Defendant might assert that his pistol was not concealed since Kenny Gray could tell that the object in his pocket was “probably” a firearm, there is simply no evidence indicating that Gray was able to notice the weapon by casual observation alone. (CF at 47). To the contrary, Gray credits his “street smarts” when explaining how he was alerted to the presence of Defendant’s weapon. (CF at 47). Courts, however, have long emphasized that for a weapon to be concealed, it need not be undetectable by such keen observation; it is sufficient that a weapon go unnoticed “by persons making ordinary contact with [the carrier] in associations [that] are common in the everyday walks of life.” *Avery v. Commonwealth*, 3 S.W.2d 624, 626 (Ky. 1928).

Most commonly, courts distinguish the critical eye of law enforcement officers from that of ordinary observation. *Robertson v. State*, 704 A.2d 267, 268 (Del. 1997) (“[A] weapon may be concealed even though easily discoverable through routine police investigative techniques.”). In short, even if a critical observer––such as a patrolling police officer or someone like Gray who “know[s] what it looks like when someone’s packing”––could have easily noticed the pistol, Defendant nevertheless carried it in a manner so as to be undetectable by casual and ordinary observation. (CF at 47).

* + 1. **Defendant’s intent while carrying his handgun is of no consequence to this Court’s determination of whether it was concealed.**

Because Stetson’s concealed carry statute contains no specific intent element, evidence of such intent is immaterial. *Dorelus*, 747 So. 2d at 371; *McMillen v. United States*, 407 A.2d 603, 605 (D.C. 1979) (“Carrying a pistol without a license is a crime unknown to the common law, and therefore the common law criminal intent element does not apply.”). As a general intent crime, the only necessary mens rea “is an intent . . . to knowingly carry the weapon on one’s person[.]” *People v. Combs*, 408 N.W.2d 420, 423 (Mich. Ct. App. 1987); *Wolfram v. State*, 568 So. 2d 992, 994 (Fla. 5th Dist. Ct. App. 1990) (emphasizing that whether a defendant believes that they carried a concealed firearm “is immaterial as is [their] belief that [they] had a valid permit to carry the firearm”); *United States v. Archer*, 531 F.3d 1347, 1351 (11th Cir. 2008) (drawing a similarity between the unlawful carry of concealed weapons and driving while intoxicated––in that neither crime need be “purposeful or deliberate”). Consequently, it would be futile for Defendant to claim that he was not carrying a concealed firearm merely because he was not *trying* to hide the fact that he was armed from Wilson. (CF at 21).

Nevertheless, Defendant could insist that by forming his off hand into the shape of a gun and blurting “pop pop” while passing Wilson, he was not carrying his pistol in a manner so as to conceal it from ordinary observation. (CF at 21). Alas, this argument is toothless because, even if Defendant unequivocally alerted Wilson to the presence of his firearm, he would still violate the statute. In fact, defendants frequently admit to carrying concealed firearms, and this does not alter the concealment analysis whatsoever. *See e.g.*, *State v. Hinkle*, 970 So. 2d 433, 435 (Fla. 4th Dist. Ct. App. 2007) (holding that since intent “is not an element of the crime[,]” the defendant did not negate his guilt when he “placed his hands outside the car and told the officer of the presence of the gun”); *State v. Lawrence*, 638 S.W.2d 780, 781 (Mo. Ct. App. 1982) (finding sufficient evidence that the defendant “was guilty of carrying a concealed weapon” despite him telling the arresting officer “that he had a gun and that it was in his right front pant pocket”). Moreover, even if Defendant went a step further and outright revealed the pistol to Wilson, such action would not necessarily defeat the concealed carry charge. *People v. Charron*, 220 N.W.2d 216, 218 (Mich. Ct. App. 1974) (“The fact that the weapon is in plain view at one point in time does not negate . . . the finding that . . . there was the necessary concealment.”).

1. **This Court should deny Defendant’s Motion to Dismiss because he, as the aggressor, forfeited his right to stand his ground.**

The right to stand one’s ground is reserved for those who are not the aggressor; those who are the aggressor, instead, have a duty to retreat prior to using deadly force. Stet. Gen. Stat. § 776.012. When a defendant initially provokes an attack, they can only qualify for Stand Your Ground Immunity if they had either: (1) “exhausted every reasonable means to escape such danger” before resorting to deadly force or (2) they, in good faith, “withdr[ew] from physical contact with the assailant and indicate[d] clearly” that they “desire[d] to withdraw and terminate the use of deadly force[.]” Stet. Gen. Stat. § 776.041.

1. **Defendant was the aggressor because he initially provoked the use of deadly force by threatening Ryan Wilson and indicating that he was armed.**

A defendant who advertises his possession of a firearm and threatens to use it against others is an initial aggressor. *See Edwards v. Att’y Gen., Ala.,* No. 19-13739-G, 2020 WL 1540405, at \*3 (11th Cir. Mar. 6, 2020) (quoting *Edwards v. Marshall*, No. 7:17-CV-00571-ACA-JHE, 2019 WL 4408447, at \*7 (N.D. Ala. Apr. 23, 2019)). For example, in *Edwards*,the Eleventh Circuit found that a defendant’s claim of Stand Your Ground Immunity was barren because the defendant was the initial aggressor. *Id.* And in holding that the defendant was the aggressor, the court found it dispositive that, in addition to “his general highly aggressive behavior[,]” he had (1) brandished his firearm and (2) threatened to shoot others. *Id.*; *accord United States v. Rico*, 3 F.4th 1236, 1239 (10th Cir. 2021) (concluding that the defendant was the initial aggressor because he “flashed his weapon, threw gang signs, . . . and yelled inflammatory comments at the rival gang before any shots were fired”).

Similarly, Defendant here was the aggressor because he indicated that he was armed and threatened to shoot Wilson. (CF at 21, 47). As Defendant approached Wilson and his friends, Defendant, to show Wilson that he was armed, formed his off hand into the shape of a pistol and blurted, “[P]op pop—you’re done.” (CF at 47). Like the defendant in *Edwards*, Defendant is not entitled to Stand Your Ground Immunity because––given that he was advertising his possession of a weapon and making threats––he was the initial aggressor. (CF at 21, 47).

To be sure, an “initial aggressor” does not include someone who merely confronts another with words alone. *See* *Ex parte Johnson*, No. SC-2023-0251, 2023 WL 8658886, at \*4–5 (Ala. Dec. 15, 2023) (quoting *Gaines v. State*, 137 So. 3d 357, 361 (Ala. Crim. App. 2013)) (concluding that the defendant was not necessarily the initial aggressor for merely questioning or verbally confrontingtheir attacker). However, a person who “provoke[s] an assault or voluntarily enter[s] an encounter” will be deemed the initial aggressor. *See State v. Nichols*, No. 01CA2775, 2002 WL 126973, at \*1, 3–4 (Ohio Ct. App. Jan. 22, 2002) (holding that the defendant was not entitled to a self-defense instruction because he, instead of leaving “well enough alone,” followed his victim into a parking lot with the intent to “engage” them in a physical confrontation).

Here, Defendant was the initial aggressor because he used more than just verbal threats when initiating the altercation with Wilson. (CF at 21, 34, 47, 59–60); (Ex.8). First, as he was approaching Wilson, he indicated that he was armed by blurting, “[P]op pop­––you’re done,” and forming his left hand into the shape of a pistol. (CF at 21, 34, 47). Next, as he was passing Wilson, he threatened him with physical harm by holding a fist up to his throat and making “a quick sliding motion with [h]is thumb across his neck.” (CF at 59–60). And after entering the breezeway, Defendant drew his firearm and pointed it in Wilson’s direction before Wilson even turned the corner. *See* (Ex. 8). Therefore, Defendant’s actions are akin to those of the defendant in *Nichols—*both approached their alleged assailants while manifesting an intent to engage them in a physical confrontation. (CF at 21, 34, 47, 59–60); (Ex.8). Defendant’s immunity claim fails because he provoked the physical attack using more than mere words. (CF at 21, 34, 47, 59–60); (Ex.8).

1. **Defendant cannot justify his aggressor status because he could not have reasonably believed he was in imminent danger of great bodily harm and failed to exhaust every reasonable means of escape.**

A defendant can be justified in initially provoking their attacker’s use of deadly force if they (1) reasonably believe they are in imminent danger of death or great bodily harm and (2) have already “exhausted every reasonable means to escape such danger other than” using deadly force. Stet. Gen. Stat. § 776.041(2)(a). Courts apply an objective standard when interpreting this rule, meaning that Defendant cannot be granted immunity unless a reasonable person in Defendant’s same position would have believed they were in imminent danger, and that deadly force was necessary. *See Mobley v. State*, 132 So. 3d 1160, 1164–65 (Fla. 3d Dist. Ct. App. 2014); *Garcia v. State*, 286 So. 3d 348, 351 (Fla. 2d Dist. Ct. App. 2019).

A defendant cannot reasonably believe they are in imminent danger if little physical force was used against them. *See* *Menard v. Fla. Att’y Gen.*, No. 2:16-CV-854-FtM-29NPM, 2020 WL 2559753, at \*14 (M.D. Fla. May 20, 2020). For example, in *Menard v. Florida Attorney General*, a Florida district court acknowledged that a reasonable person could not have believed they were in imminent danger when the only physical force used against them was a simple “push.” *Id.* There, in response to the alleged assailant’s mild “pushing” of the defendant, the defendant drew a firearm and shot them. *Id.* at \*3. Consequently, the court concluded that, as the initial aggressor, the defendant was not entitled to Stand Your Ground Immunity. *See id.* at \*14.

Here, Defendant could not have reasonably believed he was in imminent danger because no physical force was used against him. Despite Defendant’s knowledge of Wilson’s violent reputation, there was no physical force used against Defendant before he opened fire against Wilson. (CF at 22). In fact, Wilson did not “move a muscle” as Defendant passed him. (CF at 47). Even more so than the defendant in *Menard*, it is evident Defendant does not qualify for immunity; a reasonable person in his position, where *no* physical force had been used against him, would not have believed they were in imminent danger of harm. *Menard*, 2020 WL 2559753, at \*14.

Additionally, an aggressor’s use of deadly force is unjustified if they had an avenue of safe retreat. *United States v. Peterson*, 483 F.2d 1222, 1234 (D.C. Cir. 1973). A defendant can only be granted Stand Your Ground Immunity if they exhausted every reasonable means of escaping an altercation before using deadly force. *Smith v. State*, 387 So. 3d 495, 497 (Fla. 1st Dist. Ct. App. 2024). To illustrate, in *Smith v. State*, a Florida Appellate Court held that the defendant was entitled to immunity because he did not have a “reasonable pathway of retreat.” *Id.* There, the deceased and the defendant were engaged in a fistfight in a motel room. *Id.* at 496. While the defendant was pressed into a corner of the room and had no escape route, he drew his gun and shot the deceased in the torso. *Id.* In holding the defendant’s use of force justified, the court found it dispositive that he had exhausted all reasonable means of escape prior to resorting to deadly force. *Id.* at 497.

Here, Defendant cannot be granted Stand Your Ground Immunity because he did not exhaust every reasonable means of escaping the altercation with Wilson. *See* (Ex. 8); (CF at 48, 60). The incident took place in the breezeway of the motel where Defendant had many escape routes. (Ex. 8). They were outside, in an open area, and there was no one behind him to stop him from fleeing. (Ex. 8). Additionally, after Wilson was hit, he turned his back on Defendant, giving Defendant yet another opportunity to escape from the incident. (CF at 48, 60). The facts of the present case stand in stark contrast to the case of *Smith v. State*. Unlike the defendant in *Smith*, Defendant had numerous avenues of escape readily available. *See* (Ex. 8); (CF at 48, 60). Because he did not exhaust his opportunities to escape the danger prior to using deadly force, Defendant’s use of such force was unjustified, and Stand Your Ground Immunity is unwarranted.

1. **Defendant made no attempt to clearly indicate his desire to withdraw from the altercation nor terminate the use of force.**

When a defendant initially provokes the use of force, they must withdraw or indicate their desire to withdraw before using deadly force. *Schmuck v. State*, 406 P.3d 286, 308 (Wyo. 2017). A defendant may only reclaim their right to self-defense if they withdrew in good faith and clearly “announce[d] [their] desire for peace.” *Parker v. State*, 7 So. 98, 99 (Ala. 1890); *see also Rowe v. United States*, 164 U.S. 546, 556 (1896) (“[T]here must be a real and bona fide surrender and withdrawal on his part [or] . . . he will continue to be regarded as the aggressor.”).

A defendant has not withdrawn from physical contact when they have neither dropped their gun nor verbally communicated their intention to terminate their use of force. *See* *Bellcourt v. State*, 390 N.W.2d 269, 272 (Minn. 1986). For example, in *Bellcourt v. State*, the Minnesota Supreme Court held that there was clearly no withdrawal from the defendant because he held on to his gun and did not communicate that he intended to end the altercation. *See id.* There, the defendant, who was holding five people at gunpoint, was shot, and fell to the ground. *Id.* After falling, he held on to the gun, pointed it back at the victims, and shot five times. *Id.* The court reasoned that there was no withdrawal because, if the defendant had truly intended to withdraw, he would not have kept the gun in his hand and would have instead vocalized some intent to end the confrontation. *Id.*; *accord* *State v. Craig*, 514 P.2d 151, 156 (Wash. 1973) (en banc) (holding that an aggressor was barred from claiming self-defense because he did not abandon his threatening behavior, nor did he give the deceased any indication they were no longer in danger).

Here, Defendant did not indicate he was withdrawing from physical contact because he never dropped his gun, nor did he verbally communicate that he desired for the force to end. *See* (CF at 48, 60–61). After Defendant shot Wilson the first time, Wilson fell backward and was trying to run away. (CF at 48, 60). Defendant shot Wilson once more in the back, forcing Wilson to the ground. (CF at 48, 61). It was not until this point that Defendant and his brother left the scene of the shooting. (CF at 23). Similar to the defendant in *Bellcourt*, after the initial shots were fired, Defendant kept his gun and fired another shot at Wilson. (CF at 23, 48, 60–61). Additionally, Defendant failed to verbally indicate any desire to withdraw and retreated only after concluding his attack. (CF at 23). Thus, Defendant’s initial provocation of the incident and failure to meet any exception, precludes him from obtaining Stand Your Ground Immunity.

**CONCLUSION**

This Court should deny Defendant’s Motion to Dismiss. Defendant had a duty to retreat since he was engaged in criminal activity at the time of the shooting by carrying a concealed firearm. Even if Defendant’s firearm was not concealed, he was still not entitled to stand his ground since he was the aggressor; and because he failed to exhaust every reasonable means of escape or indicate any desire to withdraw prior to using deadly force, he does not qualify for Stand Your Ground Immunity.

Respectfully submitted,

/s/ 120

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