

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR COLLIER COUNTY FLORIDA
CRIMINAL ACTION

STATE OF FLORIDA,

Plaintiff,

vs.

Case No. 11-2074-CF

JOHN RICHARD ORR,

Defendant.

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CLERK OF COURTS

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FILED 10
COLLIER COUNTY, FLORIDA

AMENDED MOTION TO ESTABLISH IMMUNITY FROM PROSECUTION

Comes now Defendant, JOHN RICHARD ORR, pursuant to Rule 3.190(a) and (b), Fla. R. Crim. P. and the inherent power of this court to “do all things that are reasonable and necessary for the administration of justice within the scope of their jurisdiction, subject to valid existing laws and constitutional provisions” as set forth in *State v. Ford*, 626 So.2d 1338 (Fla. 1993), *Dennis v. State*, 51 So. 3d 456 (Fla. 2010), and *Horn v. State*, 17 So.3rd 836 (Fla. 2nd DCA 2009), and moves the Court for an order terminating the instant prosecution and releasing Defendant from custody or control, and in support thereof says:

1. Under the provisions of §776.032, Florida Statutes, Defendant is immune from prosecution for the instant offense pursuant to §776.012(1) because at the time he was attacked by the decedent, Defendant reasonably believed that

the force he used was necessary to prevent imminent death or great bodily harm to himself and/or to prevent the imminent commission of a forcible felony, to wit: a violation of Florida statutes §782.04(2), Second Degree Murder, §782.04(4), Third Degree Murder, §784.021, and/or Aggravated Assault, §784.045, Aggravated Battery, or other forcible felony proscribed by Florida statutory or common law.

2. Pursuant to the holding in *Dennis v. State, supra*, Defendant is entitled to an evidentiary hearing before this court to determine, by a preponderance of the evidence, that Defendant is so immune from prosecution.

3. The specific facts on which Defendant relies are:

- a. Defendant had no relationship with deceased and never knew him; he was a complete stranger.
- b. Defendant was walking home at night and was attacked from behind without warning, knocked to the ground, and battered by the deceased.
- c. At that time and place Defendant reasonably believed he was in jeopardy of imminent death or great bodily harm. The deceased threatened to kill Defendant and appeared to be highly intoxicated.
- d. Defendant reasonably believed that the force he used was necessary to prevent imminent death or great bodily harm to

himself and/or to prevent the imminent commission of a forcible felony on himself, to wit: a violation of Florida statutes §782.04(2), Second Degree Murder, §782.04(4), Third Degree Murder, §784.021, and/or Aggravated Assault, §784.045, Aggravated Battery, or other forcible felony proscribed by Florida statutory or common law.

- e. The deceased continued to attack Defendant while Defendant was face down on the ground. Defendant was able to finally turn his body over so that he was lying face up on the ground with the deceased was on top of him.
- f. The deceased repeatedly struck Defendant's head on the ground, attempted to gouge Defendant's eyes, and stated, "I will fucking kill you!".
- g. The deceased never expressed his reason for attacking Defendant.
- h. Defendant was unable to free himself from deceased's attack so Defendant retrieved and used his fishing knife to defend himself until such time as Defendant was able to free himself and the attack on him was stopped.

WHEREFORE Defendant requests the Court to enter an order:

- A. Determining Defendant to be immune from prosecution for the charge in this case, and
- B. Releasing Defendant from custody or control by the State of Florida.

VERIFICATION

I, JOHN RICHARD ORR, being duly sworn, depose and say that I have read the above and know the contents thereof to be true and correct.



JOHN RICHARD ORR

STATE OF FLORIDA
COUNTY OF COLLIER

The foregoing instrument was signed and sworn to before me this 5th day of January, 2012, by JOHN RICHARD ORR, () who is personally known by me/who has produced _____ as identification.



NOTARY PUBLIC

Printed Name:



My Commission Expires:

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by regular United States mail on this 5th day of January, 2012 to