

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR LEE COUNTY, FLORIDA

STATE OF FLORIDA,
Plaintiff,

v.

Case No. 11-CF-014327

JUSTIN CAMPOS,
Defendant.

_____ /

MOTION TO DISMISS
AND FOR STATUTORY IMMUNITY FROM PROSECUTION

BY _____ D.C.

2011 DEC 15 PM 3:52

JUDICIAL CIRCUIT
CLERK OF COURTS

COMES NOW the Defendant, by and through the undersigned attorney pursuant to §§ 776.012, 776.031 and 776.032 Florida Statutes (2010), Fla. R. Crim. P. 3.190(b), and the rule in Dennis v. State, 51 So. 3d 456 (Fla. 2010), and requests this Honorable Court to dismiss the prosecution in this cause because the facts herein establish that the Defendant is immune from arrest and prosecution, and in support thereof would state:

1. The Defendant is charged by information filed 16 February 2011 with two counts of murder in the second degree with a firearm, life felonies pursuant to §§ 782.04(2) and 775.087 (2)(a)(3) Florida Statutes (2010).
2. The charge arose from events on 19 January 2011 which are depicted in a video recording. The Defendant had just left a nightclub. Three other individuals (Kelvin Figueroa and two individuals hereinafter identified as "Decedent One" and "Decedent Two") also left the nightclub. The Defendant was in the parking lot, about to leave the area, when a fight arose between Daniel Guillen and Kelvin Figueroa (who was wearing a yellow shirt). During that fight one of the combatants dropped a gun. The fight ended when the Defendant secured the weapon,

Figueroa went inside the night club, and Decedent One (who was wearing a red shirt) gathered his personal effects and began to follow. The Defendant began retreating to his vehicle with the weapon in a safe position. Guillen was then lying on the ground.

3. Seconds later Decedent One returned to Guillen and began a second altercation. Guillen was still on his hands and knees, attempting to rise. Decedent One began by beating Guillen in the back of his head with his fists. Guillen was unable to defend himself. At the same time Decedent Two arrived from the rear of the parking lot at a dead run, approaching the spot where Decedent One was beating Guillen.

4. The Defendant, who had retrieved the gun from the ground, returned and shot both decedents. When the Defendant did so he actually and reasonably believed that Decedent One was committing a forcible felony, aggravated battery or felony battery, and that Decedent Two was about to join in beating Guillen.

5. Section 776.032 Florida Statutes (2010) addresses "Immunity from criminal prosecution and civil action for justifiable use of force" and provides in relevant part: "(1) A person who uses force as permitted in s. 776.012, s. 776.013, or s. 776.031 is justified in using such force and is immune from criminal prosecution and civil action for the use of such force", with certain exceptions not relevant here. The same statute provides: "As used in this subsection, the term 'criminal prosecution' includes arresting, detaining in custody, and charging or prosecuting the defendant." The same statute, known as the "Stand Your Ground" law, was enacted by chapter 2005-27, § 5, at 202, Laws of Fla.

6. Section 776.012 addresses "Use of force in defense of person" and provides in relevant part that "a person is justified in the use of deadly force and does not have a duty to retreat if: (1) He or she reasonably believes that 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....”

7. Section 776.031 addresses “Use of force in defense of others” and provides in relevant part that a “person is justified in the use of deadly force only if he or she reasonably believes that such force is necessary to prevent the imminent commission of a forcible felony. A person does not have a duty to retreat if the person is in a place where he or she has a right to be.”

8. At all relevant times the Defendant was engaged in lawful acts and was in a place (a nightclub parking lot) where he had a right to be. At no time did the Defendant engage in any unlawful activity.

9. The Defendant observed a fight where Daniel Guillen was apparently injured. Before Guillen was able to rise to his feet, Decedent One returned and resumed beating Gillian. Decedent Two also returned, apparently intending to join Decedent One in beating Gillian.

10. Under the circumstances, the Defendant had every reason to believe that use of deadly force was necessary to prevent imminent death or great bodily harm to Gillian. The Defendant also had every reason to believe that Decedent One and Decedent Two were engaging or were about to engage in commission of aggravated battery. Aggravated battery is a forcible felony; felony battery, which involves the use of physical force or violence against an individual, is also a forcible felony. See § 776.08 Florida Statutes (2010).

11. In Dennis v. State, the Florida Supreme Court held:

While Florida law has long recognized that a defendant may argue as an affirmative defense at trial that his or her use of force was legally justified, section 776.032 contemplates that a defendant who establishes entitlement to the statutory immunity will not be subjected to trial. Section 776.032(1) expressly grants defendants a substantive right to not be arrested, detained, charged, or prosecuted as a result of the use of legally justified force. The

statute does not merely provide that a defendant cannot be convicted as a result of legally justified force.

51 So. 3d 462. The Court also addressed the proper procedure for seeking dismissal under § 776.032:

We conclude that where a criminal defendant files a motion to dismiss pursuant to section 776.032, the trial court should decide the factual question of the applicability of the statutory immunity. A motion to dismiss on the basis of section 776.032 immunity is not subject to the requirements of [Fla. R. Crim. P.] 3.190(c)(4) but instead should be treated as a motion filed pursuant to [Fla. R. Crim. P.] 3.190(b).

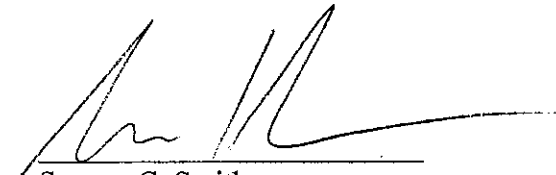
51 So. 3d 464.

Wherefore the Defendant requests this Honorable Court to dismiss the prosecution in this cause because the facts herein establish that the Defendant is immune from arrest and prosecution under § 776.032 Florida Statutes (2010).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing motion has been furnished by hand delivery before 5:00 P.M. to Stephen Russell, State Attorney, 2000 Main Street, 6th Floor, Fort Myers, Florida, on this 15 day of December, 2011.

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