IN THE SUPREME COURT OF FLORIDA

DONALD BRADLEY,

Appellant,

v. Case No. **93,373**

STATE OF FLORIDA,

Appellee.
_____/

SUPPLEMENTAL REPLY BRIEF OF APPELLANT

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Point I

THE EVIDENCE IS LEGALLY INSUFFICIENT TO SUPPORT BRADLEY'S CONVICTION FOR EITHER PREMEDITATED OR FELONY MURDER BECAUSE THE EVIDENCE WAS EQUALLY CONSISTENT WITH AN INTENT TO BEAT UP THE VICTIM, NOT TO KILL HIM, AND BRADLEY COULD NOT HAVE COMMITTED THE BURGLARY UPON WHICH THE MURDER CHARGE WAS BASED BECAUSE HE WAS INVITED INTO THE HOME BY LINDA JONES.

Point III

THE EVIDENCE FAILED TO ESTABLISH A BURGLARY BECAUSE DONALD BRADLEY WAS INVITED TO ENTER THE JONES' RESIDENCE BY LINDA JONES.

Point VII

THE TRIAL COURT ERRED IN INSTRUCTING THE JURY ON AND IN FINDING THE AGGRAVATING CIRCUMSTANCE THAT THE MURDER WAS COMMITTED DURING A BURGLARY BECAUSE THE ENTRY WAS CONSENSUAL.

Recognizing this Court's recent decision in Delgado v. State, 25 Fla. Law Weekly S79, No. 88,638 (Fla. February 3, 2000), precludes its argument that Jack Jones revoked Bradley's consent to enter, the state argues Delgado was wrongly decided and that this case highlights the error of Delgado's holding.

First, Delgado was correctly decided. This Court based its interpretation of the burglary statute on well-settled rules of statutory construction. Considering the history of the crime of burglary and its evolution, the rule announced in Delgado is reasonable and necessary. Under the rule of strict construction of statutes in derogation of the common law, courts must necessarily be careful not to extend such acts beyond the clear intent of the Legislature. This Court's previous interpretation of the statute plainly extended the reach of the statute beyond the Legislature's clear intent. Under the interpretation advocated by the state, anyone who enters a building, even with permission of the owner, but with intent to commit a felony therein, would a fortiori be guilty of burglary.

But, as this Court recognized in Delgado, the purpose of the burglary statute is to hold persons criminally accountable for invasions of privacy on a property holder with the intent to commit a crime on the property. "Since the common law required 'a violation of the security designed to exclude,' it was axiomatic that a person entering with the permission of the lawful possessor could not be guilty of burglary. E.g., State v. Moore, 12 N.H. 42 (1841); Davis v. Commonwealth, 132 Va. 521, 110 S.E. 356 (1922); 2 R. Anderson, Wharton's Criminal Law and Procedure, ss. 414, 442 (1957). Thus, only the kind of entry or remaining likely to surprise or terrorize occupants is prohibited by the crime of burglary. When the building is open to the

public or the actor otherwise licensed or invited to be there, the element of terror is missing and the requirement is not met.

The remaining in language thus covers the situation where a bank customer hides in a bank until it closes, then takes the bank's money, a situation the burglary statute is designed to reach. The surreptitious remaining in, in this situation, imposes the same kind of terror and invasion of privacy on the property holder as the uninvited entry. When a person comes onto the property by invitation or license, however, and then commits a crime, the person should be criminally liable for the acts he commits but not for his presence on the property.

On page 3 of its Supplemental Answer Brief, the state poses several hypotheticals to illustrate the error of Delgado. First:

> If Bradley had "consensually" entered and hid himself in a closet until Jack slept, then killed him, Bradley would be guilty of Burglary under Delgado. However, under Delgado, if Bradley and accomplices brazenly (non-surreptitiously) remained by terrorizing Jack prior to killing him, then they committed no Burglary. The legislature could not have intended for one who terrorizes to be less criminally liable than one who does not. Giving full, meaningful effect to the statutes' "remaining" concept requires it to be applied to both situations.

In this hypothetical, the state misinterprets the terror the burglary statute was designed to prevent or punish. The terror addressed by the burglary statute is the invasion of privacy upon the occupant by someone who has no authority to be there. Whether the victim remains asleep or wakes up is irrelevant; the

burglary statute protects against the possibility of violence occasioned by the intruder's unauthorized presence.[1] The state also argues:

> Applying the same reasoning to a kindred non-homicide situation, the non-surreptitious defendant who remains in the dwelling for the purpose of emptying the house and for the purpose of terrorizing the victim-resident by threatening to kill and rape the resident violates the sanctity and privacy of the home more than surreptitious defendant who merely hides in the closet and empties the home of its valuables while the resident sleeps.

Supplemental Answer Brief at 3. Again, the state misinterprets the terror the burglary statute was designed to punish.

On page 4 of its Supplemental Answer Brief, the state argues that if the Court maintains its holding in Delgado that the "remaining in" language applies only where the remaining was surreptitious, this Court should nonetheless find the invited entry in the present case void as a matter of "legislative intent and public policy." There is no indication of any legislative intent to make an exception to invited entry under the circumstances here. Mrs. Jones plainly had the legal authority to invite Bradley into her home. In Florida, when several or more persons have a possessory interest in the residence, any one

[1]Nor does the state does not address Linda Jones' authority to invite Bradley into the residence. If Bradley entered the residence at Linda's invitation, then hid in a closet, then killed Jack while he slept, there still would be no burglary because both the entry and remaining would be invited, albeit invited by Linda.

of them has the lawful authority to give consent to enter. Hansman v. State, 679 So. 2d 1216 (Fla. 4th DCA 1996)(state did not meet burden to disprove consent by having two of three occupants of premises testify they did not consent where state failed to show third occupant had not done so either). No Florida case has ever held such consent is rendered invalid simply because the person was invited in to commit a crime. Nor is there any indication in the statute the Legislature intended such an exception. To create an exception under the circumstances of the present case would extend the statute to include acts without any clear intent by the Legislature.

CONCLUSION

Appellant asks this Court to grant the relief requested in his initial brief.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY a copy of the foregoing has been furnished to Stephen R. White, by delivery to The Capitol, Plaza Level, Tallahassee, Florida, and a copy has been mailed to appellant, DONALD BRADLEY, #066600, Florida State Prison, Post Office Box 181, Starke, Florida 32091-0181, on this ___ day of March, 2000.

_____
Nada M. Carey