IN THE SUPREME COURT OF FLORIDA

MAURICE LAMAR FLOYD,
Appellant,

v. **CASE NO. SC95824**
STATE OF FLORIDA,
Appellee.
_____/

ON APPEAL FROM THE SEVENTH JUDICIAL CIRCUIT
IN AND FOR PUTNAM COUNTY, FLORIDA

SUPPLEMENTAL ANSWER BRIEF OF APPELLEE

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SUMMARY OF THE ARGUMENT

In light of the statutory pronouncement of legislative intent in Chapter 2001-58, it is clear that *Delgado* was wrongly decided. This Court has acknowledged same in post-*Delgado* decisions, and it is clear from *Delgado* itself that it was based solely on the erroneous discernment of intent. To the extent that *Delgado* has not been overruled by the subsequent decisions, this Court should do so now. Moreover, even were the benefit of the *Delgado* decision accorded to Floyd, he would be entitled to no relief because he utterly failed to carry his burden to establish that he entered the Goss home with the consent of the victim. The trial court's conclusion that Floyd did not make a consensual entry into that home is well supported by competent, substantial evidence, and therefore, should be upheld. Floyd is entitled to no relief.

ARGUMENT

IN VIEW OF THE LEGISLATURE'S CLEAR EXPRESSION OF LEGISLATIVE INTENT IN CHAPTER 2001-58, THE HOLDING IN *DELGADO* IN REGARD TO THE "REMAINING IN" LANGUAGE OF THE BURGLARY STATUTE SHOULD BE RECEDED FROM. IN ANY EVENT, FLOYD IS NOT ENTITLED TO RELIEF UNDER *DELGADO*.

In Chapter 2001-58, Laws of Florida, the Florida Legislature expressed "the view . . . that *Delgado*[1] was wrongly decided and

[1] *Delgado v. State*, 776 So. 2d 233 (Fla. 2000).

should be nullified." *Braggs v. State*, 27 Fla. L. Weekly D379, D380 (Fla. 3d DCA 2002). However, noting that only this Honorable Court "can recede from *Delgado*," the Third District Court of Appeal proceeded to analyze *Braggs* in light of *Delgado*. Because Braggs' "appeal was pending at the time *Delgado* was announced," and the District Court could not overrule this Court, Braggs was "entitled to the benefit of the *Delgado* decision." *Id.* at D379. The *Braggs* court certified to this Court the issue of whether Chapter 2001-58 overruled *Delgado* "for crimes committed on or before July 1, 2001." *Id.* at D380.

In his specially concurring opinion, Chief Judge Schwartz stated "that there would be no *ex post facto* or due process problem in simply overruling *Delgado* retroactively . . .." *Id.* at D381. However, he concluded that "if the statute had *not* been passed, *Delgado* would be applied to this case . . .." *Id.* For this reason "alone," he concurred in the decision to reverse Braggs' burglary conviction. *Id.*

However, in his opinion, dissenting in part, Judge Green pointed out that this Court may have already overruled *Delgado* in *Jimenez v. State*, 26 Fla. L. Weekly S625 (Fla. Sept. 26, 2001). In any event, therein, this Court acknowledged that "it had misconstrued the legislative intent of the burglary statute," and as a result, wrongly decided *Delgado. Id.* at D381.

In *Delgado*, this Court clearly articulated the basis of its

decision to change the well-established burglary law of this State: "The question before this Court is whether the Legislature intended to criminalize the particular conduct . . . as burglary when it added . . . 'remaining in' to the burglary statute." 776 So. 2d at 239. This Court went on to explain that the "remaining in" language of the Statute "[i]n the context of an occupied dwelling . . . was not intended to cover the situation where an invited guest turns criminal or violent." *Id.* at 240. Instead, it "was intended to criminalize the conduct of a suspect who terrorizes, shocks, or surprises the unknowing occupant." *Id.* It is clear from the *Delgado* opinion that the change this Court wrought in the burglary law was made because this Court thought that change was intended by the language of the law. As this Court acknowledge in *Jimenez*, that conclusion was wrong.

Since *Delgado* was decided squarely on this Court's discernment of legislative intent, and the Legislature has clearly said that this Court's conclusion as to that intent was wrong, this Court should recede from *Delgado*. In so doing, this Court would **not** be applying a new statute to criminalize behavior which would not have otherwise been criminal. Rather, this Court would be correcting its own error, made when it misapprehended the legislative intent underlying the then existing burglary statute. Therefore, such a decision would not run afoul of the *ex post facto* provisions of the State and Federal Constitutions.

Floyd's "offense occurred in 1998" and "his conviction and sentence were rendered in 1999." (SIB at 4). The law in effect at those times was, and long had been, that consent to remain in could be withdrawn by the commission of a criminal act against the owner of the premises. That this Court erroneously concluded in *Delgado* that the Legislature intended a different result than that which had long been the law did not vest Floyd with any right to benefit from this Court's erroneous conclusion.[2] This Court may, and should, recede from its incorrect determination in *Delgado*, and the law in effect at the time Floyd committed the acts at issue in the instant case should be applied. Application of the law in effect at the time of Floyd's crimes compels affirmance of the burglary conviction. Floyd is entitled to no relief.

Floyd killed Mary Goss in the late evening hours of July 13, 1998, and his appeal from his conviction for that murder was filed on June 4, 1999. (R 1002). Thus, if *Delgado* was not nullified by Chapter 2001-58, or receded from in *Jimenez*, it appears to apply to Floyd's case. *See Delgado*, 776 So. 2d at 241; *Braggs*, 27 Fla. L. Weekly at D380. *See also*, *Francis v. State*, 808 So. 2d 110, 133-34 (Fla. 2001)[wherein *Delgado* was discussed and considered in deciding the issues raised]. However, as argued in the answer

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[2] It is noteworthy that had *Delgado* been a legislative enactment, it could not have been applied to Floyd because his crime was committed before *Delgado* was rendered.

brief previously filed herein, Floyd is not entitled to any relief under *Delgado* because he did not prove that his entry into Mrs. Goss' home was consensual.

In *Francis v. State*, this Court reaffirmed the well-established rule that "the burden is on the defendant to establish consent." 808 So. 2d at 133. That Francis "knew the victims" and "there were no signs of forced entry" did not meet this burden. *Id.* This Court noted that there were "a host of non-consensual scenarios" which could still arise, to-wit: "the defendant entered, without an invitation, through an unlocked door; the defendant used the key that the victims kept hidden; or the defendant pushed his way into the house after the victims opened the door in response to his knock." *Id.* at 133-34.

Moreover, in *Francis*, this Court noted that at trial, Francis "at no point argued, or even suggested, that the victims invited him into the home." *Id.* at 133. Neither did Floyd do so at trial. Rather, he argued to the jury that some one else - an unidentified person who complained that she had "told the crackers" something - had killed her. *See* R 1922-23, 1160. At no time, did he argue to the jury that he had entered Mrs. Goss' residence consensually. In fact, he did not concede that he entered at all!

Thus, as in *Francis*, there are a host of non-consensual scenarios, including: Floyd entered without an invitation through the unlocked screen door; he pushed his way into the house after

Mrs. Goss opened the door in response to his knock, or arrival on her porch. More importantly, however, in this case, as set-out in the original answer brief, there is no need to resort to potential non-consensual scenarios because the evidence established that the entry was non-consensual. It well supports the trial court's factual conclusion that Floyd entered without consent.

Evidence on which a lack of consent could be based includes that Mrs. Goss was aware that Floyd had threatened the life of herself and her grandchildren, and that he had assaulted Trelane and escaped from the police earlier that day. (R 1529, 1539). Mr. Goss testified that the front door and lock were severely damaged and had not been that way when he left for work earlier in the day.[3] (R 1692). Officer Zike confirmed that upon arrival at the Goss home he noticed, and pointed out to another officer, "that the door had been kicked in." (R 1641). Mr. Goss also testified that based on many, many years of marriage, he knew that there was no way Mrs. Goss would have consented to Floyd's entry into her home

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[3] Floyd did not present the claim, first made in his original initial brief, - that the door may have been damaged when Mrs. Goss attempted to flee from the house - in the lower court. Thus, it may not be considered on appeal. *Steinhorst v. State*, 412 So. 2d 338 (Fla. 1982), *cert. denied*, 522 U.S. 1022 (1997). Moreover, where the evidence is susceptible of two different conclusions regarding the time of the damage, it is up to the factfinder to decide between them. Clearly, the jury and the trial judge concluded that the damage occurred when Floyd entered the home without Mrs. Goss' consent.

while wearing a gown with no undergarments. (R 1603). Finally, Floyd told Tashoni Lamb he killed Mary Goss because "she had threatened to call the police on him."[4] (R 1787).

Clearly, the evidence, and reasonable inferences therefrom, far exceed the competent, substantial evidence standard needed to support the trial court's factual finding that Floyd entered the Goss residence without consent. Certainly, Floyd has not carried his burden to establish that he entered with consent. Thus, he is entitled to no relief. *Francis; Delgado*.

This Court should recede from *Delgado*.

CONCLUSION

Wherefore, based upon the foregoing argument and authorities, the State submits that Floyd's convictions and sentence of death should be affirmed in all respects.

Respectfully submitted,

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[4] A reasonable factfinder could have concluded that Mrs. Goss threatened to call the police as part of her denying Floyd access to her home.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above has been furnished by U.S. Mail to: **Christopher Quarles**, Assistant Public Defender, 112 Orange Ave., Suite A, Daytona Beach, FL 32114, on this _____ day of May, 2002.

Of Counsel

CERTIFICATE OF COMPLIANCE

This brief is typed in Courier New 12 point.

JUDY TAYLOR RUSH
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