

CHAPTER 2004-93

House Bill No. 1807

An act relating to burglary; amending s. 810.015, F.S.; providing legislative findings and intent, providing for special rules of statutory construction; providing retroactive applicability; providing an effective date.

WHEREAS, the Legislature finds that the holding in the case of *Delgado v. State*, 776 So.2d 233 (Fla. 2000) was previously rejected by the Legislature in s. 810.015, F.S., and

WHEREAS, the Legislature finds that *Delgado v. State*, 776 So.2d 233 (Fla. 2000) was unjust and unnecessarily disruptive of the law of burglary, and

WHEREAS, the Legislature declared its intention in Chapter 2001-58, Laws of Florida, that the holding of *Delgado v. State*, 776 So.2d 233 (Fla. 2000) be nullified, and

WHEREAS, the Legislature finds that the continued application of the holding of *Delgado v. State*, 776 So.2d 233 (Fla. 2000), unnecessarily perpetuates the manifest injustice of its holding to other cases, and

WHEREAS, the Legislature finds that contrary to the representation by the majority in *Delgado v. State*, 776 So.2d 233 (Fla. 2000), the State of New York does not restrict its “remaining in” burglaries exclusively to those in which the defendant remains “surreptitiously” and that the two cases cited in *Delgado v. State*, 776 So.2d 233 (Fla. 2000) by the majority do not judicially insert such a requirement into the New York statute, and

WHEREAS, the Legislature finds that the Florida Supreme Court has no authority to add substantive elements to crimes notwithstanding the practice of other states’ courts, other states’ legislatures, the Model Penal Code, the Model Penal Code commentary, or “other scholars”, and

WHEREAS, the Legislature finds that the Florida Supreme Court has the authority and responsibility “to reconsider and correct erroneous rulings in exceptional circumstances and where reliance on the previous decision would result in manifest injustice. . .” *State v. Owens*, 696 So.2d 715, 720 (Fla. 1997), and

WHEREAS, the Legislature finds that the case of *Delgado v. State*, 776 So.2d 233 (Fla. 2000), results in decisions which are manifestly unjust because it has caused the reversal of convictions of individuals who were tried and convicted of burglary, or felony murder based on burglary, under the interpretation of the burglary statute approved by the Legislature, in order to grant relief to undeserving defendants under an interpretation of the burglary statute expressly rejected by the Legislature, based solely on the Florida Supreme Court’s philosophical disagreement with the policy decision of the Legislature with respect to burglary, and

WHEREAS, the Legislature finds that s. 810.015, F.S. was written to restore the law of burglary to what it was on February 1, 2000, NOW, THEREFORE;

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 810.015, Florida Statutes, is amended to read:

810.015 Legislative findings and intent; burglary.—

(1) The Legislature finds that the case of Delgado v. State, 776 So.2d 233(Fla. 2000), Slip Opinion No. SC88638 was decided contrary to legislative intent and the case law of this state relating to burglary prior to Delgado v. State. The Legislature finds that in order for a burglary to occur, it is not necessary for the licensed or invited person to remain in the dwelling, structure, or conveyance surreptitiously.

(2) It is the intent of the Legislature that the holding in Delgado v. State, 776 So.2d 233 (Fla. 2000) Slip Opinion No. SC88638 be nullified. It is further the intent of the Legislature that s. 810.02(1)(a) be construed in conformity with Raleigh v. State, 705 So. 2d 1324 (Fla. 1997); Jimenez v. State, 703 So. 2d 437 (Fla. 1997); Robertson v. State, 699 So. 2d 1343 (Fla. 1997); Routly v. State, 440 So. 2d 1257 (Fla. 1983); and Ray v. State, 522 So. 2d 963 (Fla. 3rd DCA, 1988). This subsection shall operate retroactively to February 1, 2000.

(3) It is further the intent of the Legislature that consent remain an affirmative defense to burglary and that the lack of consent may be proven by circumstantial evidence.

(4) The Legislature finds that the cases of Floyd v. State, 850 So.2d 383 (Fla. 2002); Fitzpatrick v. State, 859 So.2d 486 (Fla. 2002); and State v. Ruiz/State v. Brags, Slip Opinion No.s SC02-389/SC02-524 were decided contrary to the Legislative intent expressed in this section. The Legislature finds that these cases were decided in such a manner as to give subsection (1) no effect. The February 1, 2000 date reflected in subsection (2) does not refer to an arbitrary date relating to the date offenses were committed, but to a date before which the law relating to burglary was untainted by Delgado v. State, 776 So.2d 233(Fla. 2000).

(5) The Legislature provides the following special rules of construction to apply to this section:

(a) All subsections in this section shall be construed to give effect to subsection (1);

(b) Notwithstanding s. 775.021(1), this section shall be construed to give the interpretation of the burglary statute announced in Delgado v. State, 776 So.2d 233(Fla. 2000), and its progeny, no effect; and

(c) If language in this section is susceptible to differing constructions, it shall be construed in such manner as to approximate the law relating to burglary as if Delgado v. State, 776 So.2d 233(Fla. 2000) was never issued.

(6) This section shall apply retroactively.

Section 2. This act shall take effect upon becoming a law.

Approved by the Governor May 21, 2004.

Filed in Office Secretary of State May 21, 2004.