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CRIMINAL LAW: 2002-2004 SURVEY OF FLORIDA LAW

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I. INTRODUCTION

This article reviews decisions by the Supreme Court of Florida in the substantive area of criminal law published between May 1, 2002 and September 1, 2004.1 The time period begins where the last criminal law review survey created for this Law Review ended.2 This article will follow the conventions in selecting cases for discussion utilized in prior criminal law survey articles.3 As in past surveys, this article will focus on significant cases dealing with substantive issues concerning the area of criminal law decided by the Supreme Court of Florida, but it will not address district courts of appeal decisions that have not been appealed to the supreme court, nor will it discuss cases that only deal with evidentiary or procedural issues raised on appeal.4

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1. The author has selected, as the beginning and ending points of this article, decisions reported in Volumes 804 through 877 of the Southern Reporter, Second Series.


3. As in past criminal law surveys, this article will not address issues concerning criminal procedure, such as search and seizure. Although significant to the practitioner, those issues raise constitutional concerns that extend beyond the substantive focus of this piece. Furthermore, consistent with past articles, this survey will not generally address the complex and specialized areas of death penalty and sentencing guidelines. The article will address select sentencing and procedural cases that involve disputes about the definition of substantive crimes.

4. The article does not cover every decision issued by the Supreme Court of Florida during this time period. As in past criminal law surveys, cases that simply apply standard fact patterns to well-settled rules of law are not discussed. Instead, the survey attempts to identify and discuss cases that have settled conflicts, interpreted statutes for the first time, or altered
During this two-year period, most of the cases selected have clarified conflicts between the district courts of appeal concerning the interpretation of a variety of criminal statutory provisions. Section II will discuss a number of cases in which defendants challenged the finding that they had premeditated the killings that they committed. In Section III, the article will look at the required mens rea for some controlled substance statutes. Section IV revisits an issue discussed in the last criminal law summary in this Law Review: the correct application of the “remaining in” phrase in the state’s burglary statute. Section V deals with cases that involve disputes concerning the interpretation of a variety of criminal law statutes. As has been the case with previous criminal law surveys in this Law Review, the Supreme Court of Florida has considered a number of challenges involving new statutory interpretation questions and has also revisited some recurring issues.

II. HOMICIDE

As one leading commentator on criminal law has noted, almost all states that divide murder into grades include “willful, deliberate, [and] premeditated” killings as first-degree murder. Florida’s homicide statute continues to maintain that a “premeditated design” is a condition that will elevate a homicide to a first-degree capital felony. Although commonly used, courts have had much difficulty in applying this term in a precise and consistent manner. Rather than designate a certain minimum amount of time that will satisfy the standard, the Supreme Court of Florida has stated its standard for this phrase to mean a “fully formed conscious purpose to kill,” which may be “formed a moment before the act but must exist for a sufficient length of time to permit reflection as to the nature of the act to be committed and the probable result of that act.” The court has also noted that it can “be formed in a moment and need only exist ‘for such time as will allow the accused to be conscious of the nature of the act he is about to commit and the probable

5. JOSHUA DRESSLER, UNDERSTANDING CRIMINAL LAW § 31.03[C][1] (3d ed. 2001).
6. FLA. STAT. § 782.04 (1)(a) (2003). “The unlawful killing of a human being: 1) When perpetrated from a premeditated design to effect the death of the person killed or any human being . . . is murder in the first degree and constitutes a capital felony, punishable as provided in s. 775.082.” Id.
7. Id.
result of that act.

In order to satisfy this elusively imprecise standard, the Supreme Court of Florida has attempted to provide guidance by stating that the following factual circumstances can support an inference that the killer's state of mind satisfies the premeditation requirement: "the nature of the weapon used, the presence or absence of adequate provocation, previous difficulties between the parties, the manner in which the homicide was committed, and the nature and manner of the wounds inflicted.

In the past two years, the Supreme Court of Florida has had the opportunity to discuss how this test should be applied to a number of appealed homicide cases. In *Morrison v. State*, the court found that the nature of the stab wounds, and the fact that the victim could have identified the victim, were circumstances that supported the finding of premeditation.

In *Evans v. State*, the court was able to point to a number of pieces of evidence that indicated that the defendant had considered killing the victim before the fatal act. The defendant had told a number of witnesses that he was going to "take care of his brother's work for him" and specifically told his prison-mate, before he was released from prison, that he was going to kill his brother's girlfriend, whom he believed was unfaithful to his brother. In addition, there was evidence on the evening of the shooting that he was looking for the victim.

Similarly, the court found sufficient evidence of premeditation in *Floyd v. State*. The evidence in this case included "selection and transportation of a gun to the victim's home," remaining in the victim's home for a significant period of time before shooting her, chasing the victim, and stating one day prior to the killing that he was going to "kill his wife or someone she loved" (the victim was the defendant's mother in law).

In *Conde v. State*, the court considered that the defendant had spent considerable time with the victim before attacking her, the victim had struggled during the attack, "it takes approximately three minutes to strangle someone to death," and that the defendant had murdered five other victims in

11. 818 So. 2d 432 (Fla. 2002).
12. *Id.* at 453.
13. 838 So. 2d 1090 (Fla. 2002).
14. *Id.* at 1095.
15. *Id.*
16. *Id.*
17. 850 So. 2d 383 (Fla. 2002).
18. *Id.* at 397.
19. 860 So. 2d 930 (Fla. 2003).
similar fashion.\textsuperscript{20} Taken together, the court found that these circumstances constituted more than sufficient evidence of premeditation.\textsuperscript{21} Similarly, in \textit{Johnston v. State},\textsuperscript{22} the court found that evidence of manual strangulation and defensive bruising on the victim—showing that she had struggled with her assailant—were sufficient to support a finding of premeditation.\textsuperscript{23} It surely appears that the supreme court was correct in holding that these defendants had formed a conscious purpose to kill more than a moment before the fatal act. It is hard to argue that these particular defendants did not understand the nature of their acts or the probable results. This seems particularly easy in the strangulation cases where it takes more than a moment to strangle someone and in these cases, the defendants overcome the struggling defensive actions of the victims.\textsuperscript{24} In none of these cases did the court push the limits of the brevity of time that even its definition of premeditation could arguably permit, and some formulations of which by some courts have come under criticism by commentators.\textsuperscript{25}

\section{III. Controlled Substances}

In a series of cases, the Supreme Court of Florida has also taken a look at what the knowledge element in the statute outlawing the possession of controlled substances requires. In \textit{Scott v. State},\textsuperscript{26} the defendant was charged with the possession of contraband in a correctional facility.\textsuperscript{27} At the conclusion of the trial, defense counsel requested a jury instruction, pursuant to the court's prior opinion in \textit{Chicone v. State},\textsuperscript{28} that the element of knowledge requires that the defendant have "knowledge of the illicit nature of the substance possessed."\textsuperscript{29} The court reiterated that mere knowledge of possession

\begin{flushleft}
\textsuperscript{20} \textit{Id.} at 943.  \\
\textsuperscript{21} \textit{Id.}  \\
\textsuperscript{22} 863 So. 2d 271 (Fla. 2003).  \\
\textsuperscript{23} \textit{Id.} at 285.  \\
\textsuperscript{24} \textit{See} Johnson v. State, 863 So. 2d 271 (Fla. 2003); Floyd v. State, 850 So. 2d 383 (Fla. 2002).  \\
\textsuperscript{25} \textit{See, e.g., WAYNE R. LAFAYE, PRINCIPLES OF CRIMINAL LAW, § 13.7(a) (Thompson West 2003) (criticizing statements that premeditation "require[s] only a brief moment of thought" or a "matter of seconds."); see also DRESSLER, supra note 5 at §31.04[C][3] (criticizing formulations that premeditation can be satisfied by "[a]ny interval of time between the forming of the intent to kill and the execution of that intent, which is of sufficient duration for the accused to be fully conscious of what he intended" or that "no time is too short for a wicked man to frame in his mind the scheme of murder.").}  \\
\textsuperscript{26} 808 So. 2d 166 (Fla. 2002).  \\
\textsuperscript{27} \textit{Id.} at 168.  \\
\textsuperscript{28} 684 So. 2d 736 (Fla. 1996).  \\
\textsuperscript{29} \textit{Scott}, 808 So. 2d at 168.  
\end{flushleft}
of the substance was not sufficient; the defendant must also know the nature of the substance.\(^{30}\) Furthermore, the court rejected the argument that the lack of knowledge of the illicit nature of the substance is an affirmative defense.\(^{31}\) The court explained how this case impacted its earlier opinion in *State v. Medlin*,\(^{32}\) which seemed to be creating some confusion in the district courts of appeal.\(^{33}\) In the *Medlin* case, the court had held that the possession of a controlled substance raises a rebuttable presumption that the possessor is aware of the nature of the drug possessed.\(^{34}\) The court noted that the *Medlin* presumption applied in cases where the defendant had actual possession of the contraband, and even then, only after the element of the illicit nature of the drug was first explained to the jury.\(^{35}\) In the *Scott* case, the drugs were found in the defendant’s locker.\(^{36}\) Justice Wells argued in dissent that the element was to be determined by the legislature, and that lack of knowledge should be an affirmative defense.\(^{37}\)

In a subsequent case, *McMillon v. State*,\(^{38}\) the Supreme Court of Florida ruled that it was reversible error to deny a *Chicone* instruction in a case of actual possession, but that the state was also entitled to a *Medlin* instruction in such a case.\(^{39}\) Similarly, the court in *Washington v. State*\(^{40}\) held that the failure to provide the *Chicone* instruction in a case in which the defendant sold a bag of cannabis was reversible error.\(^{41}\) In yet another case, *Williamson v. State*,\(^{42}\) the defendant was charged with illegal possession of codeine.\(^{43}\)

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30. *Scott*, 808 So. 2d at 169 (citing *Chicone* v. State, 684 So. 2d 736, 744 (Fla. 1996)).
31. *Id.*
32. 273 So. 2d 394 (Fla. 1973).
33. *Id.* at 395.
34. *Id.* at 397.
35. *Scott*, 808 So. 2d at 171.
36. *Id.* at 172.
37. *Id.* at 173.
38. 813 So. 2d 56 (Fla. 2002).
39. *Id.* at 58. The erroneous jury instruction used by the trial court was the standard jury instruction for possession cases. *Id.* The supreme court held this instruction inadequate because it did not “indicate that the State must prove the defendant had knowledge of the illicit nature of the substance he possessed . . . [f]ailure to so instruct diminishes the State’s responsibility to prove each element of its case.” *Id.*
40. 813 So. 2d 59 (Fla. 2002).
41. *Id.* at 60.
42. 813 So. 2d 61 (Fla. 2002).
43. See *id.* at 62. Williamson was charged with violating section 893.13(6)(a) of the *Florida Statutes*, which provides that:

It is unlawful for any person to be in actual or constructive possession of a controlled substance unless such controlled substance was lawfully obtained from a practitioner or pursuant to a valid prescription or order of a practitioner while acting in the course of his or her professional practice or to be in actual or constructive possession of a controlled substance except as otherwise authorized by this chapter.
and the court attempted to further explain the interrelationship of the two instructions. In *Williamson*, the defendant was charged with stealing pills marked “Tylenol,” below which the word “codeine” was written; however, the word was written in such fine print that it could not be read without the aid of a microscope. In reversing the conviction for error because the trial court had refused to give the *Chicone* instruction, the court again noted that the *Medlin* presumption was applicable to cases in which the defendant had actual possession or exclusive constructive possession, but that the presumption might not be sufficient when there is other evidence which tends to negate it. Certainly, the *Chicone* and *Medlin* decisions have led to confusion about the interrelationship of the opinions and the instructions to be given in possession cases. The court’s attempt to provide an explanation should be helpful to Florida trials and lower appellate courts in the future.

**IV. BURGLARY**

The Supreme Court of Florida continued to address the application of the burglary statute in relationship to its prior holdings in the case previously discussed in Section II, *Floyd v. State*. In the most recent summary of Florida criminal law in this Law Review, the author discussed the disagreement between the Supreme Court of Florida, as per its opinion in *Delgado v. State*, and the Florida Legislature over the proper interpretation concerning the “remaining in” portion of the state’s burglary statute, as well as, the legislature’s subsequent attempt to overturn the court’s interpretation of that provision. In *Floyd*, the contested jury instruction did not include a finding that the defendant remained in the victim’s home surreptitiously; therefore, the court reversed the armed burglary conviction, and was thus required to reverse the felony murder conviction as well, because the burglary was the

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*Id.* at 64.

44. *See id.* at 64–5.

45. *Id.* at 63.

46. *Id.* at 64.


49. 776 So. 2d 233 (Fla. 2000).


51. *See Adams, supra* note 2, at 4–7. The relevant part of the statute, prior to amendment by the legislature, stated that burglary included “remaining in a structure or a conveyance with the intent to commit an offense therein, unless the premises are at the time open to the public or the defendant is licensed or invited to enter or remain.” *FLA. STAT.* § 810.02(1) (1989). The *Delgado* case held that the defendant was only guilty of burglary if his remaining in the structure or conveyance was done surreptitiously. *Delgado*, 776 So. 2d at 237.
predicate felony for the felony murder conviction.\textsuperscript{52} Despite the fact that the legislature indicated its desire to nullify the holding in \textit{Delgado}, the court noted that the amendment to the Act was made to operate retroactively to February 1, 2000, and the killing in this case occurred prior to that date.\textsuperscript{53} The majority’s holding in \textit{Floyd} drew a dissent from Justice Wells, who argued that the legislature’s intent in amending the burglary statute was to completely nullify the holding in \textit{Delgado}, which it believed improperly interpreted the burglary statute.\textsuperscript{54}

The court also attempted to clarify its \textit{Delgado} decision in the \textit{Morrison} case discussed in Section II of this article.\textsuperscript{55} It noted that the victim’s failure to lock the door after telling the defendant that he could not come into the apartment, and then closing the door, negated the defendant’s argument that his entry had been consensual; therefore, his case was similar to \textit{Delgado} where the victim had originally consented to the entry, but then withdrew it.\textsuperscript{56} This rejection seems to be a reasonable construction of its earlier decision and the burglary statute.\textsuperscript{57}

In \textit{State v. Byars},\textsuperscript{58} the Supreme Court of Florida addressed the scope of the “open to the public” provision of the burglary statute.\textsuperscript{59} The accused in \textit{Byars} entered his wife’s place of employment, a consignment store, despite a domestic violence injunction prohibiting his presence there, and killed his wife.\textsuperscript{60} The court found that the statute’s reference to the public nature of the premises was to be interpreted to refer to the general nature of the premises, not the personal characteristics of the individual charged with the crime.\textsuperscript{61} It thus held that the injunction was irrelevant to the consideration of whether the premises were open to the public.\textsuperscript{62} The majority rejected contrary decisions from other states and an argument of a contrary construction of the Florida trespass statute because of differences in statutory language.\textsuperscript{63}

\begin{itemize}
  \item \textsuperscript{52} Floyd v. State, 850 So. 2d 383, 402 (2003).
  \item \textsuperscript{53} \textit{Id}.
  \item \textsuperscript{54} \textit{Id.} at 411. (Wells, J., concurring in part and dissenting in part).
  \item \textsuperscript{55} Morrison v. State, 818 So. 2d 432 (Fla. 2002).
  \item \textsuperscript{56} \textit{Id.} at 454.
  \item \textsuperscript{57} \textit{Id}.
  \item \textsuperscript{58} 823 So. 2d 740 (Fla. 2002).
  \item \textsuperscript{59} Section 810.02 of the \textit{Florida Statutes}, says in part: “Burglary means entering or remaining in a dwelling, structure, or a conveyance with the intent to commit an offense therein, unless the premises are at the time open to the public or the defendant is licensed or invited to enter or remain.” \textit{FLA. STAT.} § 810.02 (2003).
  \item \textsuperscript{60} \textit{Byars}, 823 So. 2d at 740.
  \item \textsuperscript{61} \textit{Id}.
  \item \textsuperscript{62} \textit{Id.} at 743.
  \item \textsuperscript{63} \textit{Id.} at 743–45.
\end{itemize}
statutory construction given to the statute by the court seems to be the most reasonable one.\textsuperscript{64}

V. OTHER CRIMES

The Supreme Court of Florida also dealt with a number of other substantive criminal issues during the past two years. In \textit{Wright v. State},\textsuperscript{65} "Wright was the driver of a vehicle from which [his] two cohorts wearing masks emerged and robbed another driver."\textsuperscript{66} Wright, who was not wearing a mask, had his crime reclassified to the next higher degree under the Florida statute increasing the severity of the category of crimes committed while the offender was wearing one.\textsuperscript{67} The majority properly held that the statute requires that the defendant personally wear a hood, mask, or similar device, in order to have his crime enhanced.\textsuperscript{68} Chief Justice Wells\textsuperscript{69} dissented, arguing that the legislature intended that an accomplice could be vicariously liable by making this act a separate substantive crime, as opposed to merely a sentence enhancer.\textsuperscript{70}

The Supreme Court of Florida considered the constitutionality of a driver's license statute in \textit{Florida Department of Highway Safety & Motor Vehicles v. Critchfield}.\textsuperscript{71} In \textit{Critchfield}, the defendant had his license permanently revoked in 1987 after his fourth DUI conviction.\textsuperscript{72} At the time of his sentencing, he was told that he would be eligible for a hardship license after five years.\textsuperscript{73} However, when he applied in 1999, he was informed that he

\begin{itemize}
\item \textsuperscript{64} \textit{Id.}
\item \textsuperscript{65} 810 So. 2d 873 (Fla. 2002).
\item \textsuperscript{66} \textit{Id.} at 874.
\item \textsuperscript{67} \textit{See} FLA. STAT. § 775.0845 (2003). Section 775.0845 of the \textit{Florida Statutes} provides:
\begin{quote}
The felony or misdemeanor degree of any criminal offense, other than a violation of . . . [sections] 876.12-87.15, shall be reclassified to the next higher degree as provided in this section if, while committing the offense, the offender was wearing a hood, mask, or other device that concealed his or her identity.
\end{quote}
\textit{Id.}
\item \textsuperscript{68} \textit{Wright}, 810 So. 2d at 874.
\item \textsuperscript{69} Formerly referred to as Justice Wells. Rule 2.030(2)(a) of the \textit{Florida Rules of Judicial Administration} provides that "[t]he chief justice shall be chosen by a majority vote of the justices for a term commencing on July 1 of even-numbered years. If a vacancy occurs, a successor shall be chosen promptly to serve the balance of the unexpired term." FLA. R. JUD. ADMIN. 2.030 (2)(a).
\item \textsuperscript{70} \textit{Wright}, 810 So. 2d at 876.
\item \textsuperscript{71} 842 So. 2d 782 (Fla. 2003).
\item \textsuperscript{72} \textit{Id.} at 783.
\item \textsuperscript{73} \textit{Id.} at 784–85.
\end{itemize}
was no longer eligible because of a change in the law.\footnote{Id.} The court found that the amendment violated Florida’s state constitutional requirement that each statute contain but one subject.\footnote{Id. at 784–85. Article III, section 6, of the Florida Constitution provides, in pertinent part: “[e]very law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title . . . .” FLA. CONST. art. III, § 6.} The amendments to the driver’s license statute also contained an amendment to the bad check statute, which involves the assignment of a bad check debt to a private debt collector.\footnote{Critchfield, 842 So. 2d at 785.} The court correctly considered this provision to be unrelated to the provisions regulating criminal penalties related to driver’s licenses.\footnote{Id.} Justice Cantero argued that the provision should be upheld because one of the amendments in the Act also provided for suspension of drivers’ licenses for those passing worthless checks.\footnote{Id. at 786.} The dissent also argued that doubts about whether the single subject requirement was violated should be resolved in favor of upholding a statute.\footnote{Id. at 788.} Although it is true that the section on driver’s license revocation for passing bad checks was related to the other provisions relating to driver’s licenses, this arguably should not save this provision whose relationship to most of the amendment was unrelated.\footnote{Id. at 784.} The need to prevent “logrolling” is of sufficient importance to require the legislature to separate out unrelated provisions when it proposes legislation into separate bills.\footnote{Critchfield, 842 So. 2d at 785 (citing Martinez v. Scanlan, 582 So. 2d 1167 (Fla. 1991)).}

In a separate case, the court considered a concept that has perplexed courts, scholars, and law students throughout the ages.\footnote{Reynolds v. State, 842 So. 2d 46 (Fla. 2002).} In Reynolds v. State, the question was whether a crime is one that requires a general or a specific intent by the defendant.\footnote{Id.} In this case, Ronald Reynolds was convicted of felony animal cruelty,\footnote{See FLA. STAT. § 828.12 (2) (2003). Section 828.12(2) of the Florida Statutes, provides:

A person who intentionally commits an act to any animal which results in the cruel death, or excessive or repeated infliction of unnecessary pain or suffering, or causes the same to be done, is guilty of a felony of the third degree, punishable as provided in s. 775.082 or by a fine of not more than $10,000 or both.

Id.} which he argued required a specific intent or, in the alternative, was unconstitutional if it did not so require.\footnote{Reynolds, 842 So. 2d at 47.} The issue
of what elements follow and modify the word "intentionally" is one that comes up with some frequency in cases involving statutory construction.\textsuperscript{86} In this case, the issue was whether it applied only to the commission of the act itself or to the result of a cruel death or the infliction of unnecessary pain or suffering.\textsuperscript{87} The court distinguished the language in this statute from one where the adjective at issue was followed immediately by a list of nouns.\textsuperscript{88} It also distinguished it from another animal cruelty statutory section that more clearly indicated that the mens rea element modified the result element in that provision.\textsuperscript{89} The court also rejected the constitutional argument of the defendant that his due process rights were violated because it found that the statute did expressly have an intent requirement.\textsuperscript{90} Although the statute is not a model of clarity in indicating the scope of the intent requirement, the court seems to have applied the best interpretation in this case, particularly when compared with the other animal cruelty statutory section noted.\textsuperscript{91}

The court considered the sufficiency of the evidence produced in a burglary case in \textit{D.S.S. v. State}.\textsuperscript{92} This case involved four juveniles who broke into Plant City High School, where they committed acts of vandalism and stole a number of items.\textsuperscript{93} They were charged with burglary, criminal mischief, petit theft, and resisting an officer without violence.\textsuperscript{94} D.S.S. argued that the state failed to prove its prima facie case by failing to show that the Hillsborough County School Board owned the building into which the defendants had illegally entered.\textsuperscript{95} Although the court held that ownership of the building or structure is a material element of burglary, it also held that the ownership element is not the same as would be required in property law.\textsuperscript{96} Rather, it argued that the "ownership" interest was possessory in nature; thus, protecting "any possession which is rightful as against the burglar and is satisfied by proof of special or temporary ownership, possession, or control."\textsuperscript{97} The court upheld the verdict, despite a failure by the state to provide

\textsuperscript{86} \textit{Id.} at 49.
\textsuperscript{87} \textit{Id.} at 48.
\textsuperscript{88} \textit{Id.} (distinguishing State v. Huggins, 802 So. 2d 276 (Fla. 2001)).
\textsuperscript{89} \textit{Id.} at 49 (comparing section 828.12(2) that provides: "A person who tortures any animal with intent to inflict intense pain, serious physical injury, or death upon the animal is guilty of a felony of the third degree . . . ").
\textsuperscript{90} \textit{Reynolds}, 842 So. 2d at 51.
\textsuperscript{91} \textit{Id.}
\textsuperscript{92} 850 So. 2d 459 (Fla. 2003).
\textsuperscript{93} \textit{Id.} at 460.
\textsuperscript{94} \textit{Id.}
\textsuperscript{95} \textit{Id.} at 460–61.
\textsuperscript{96} \textit{Id.} at 461.
\textsuperscript{97} \textit{D.S.S.}, 850 So. 2d at 461 (quoting \textit{In re M.E.}, 370 So. 2d 795, 797 (Fla. 1979)).
direct evidence of ownership of the building, by noting that there was considerable circumstantial evidence of possession of the school building, including references to the high school by various witnesses. Although it appears that the court properly upheld the verdict, it serves as a warning to attorneys to be careful about neglecting to provide evidence on a material element, even if the material element seems to be undisputed.

Another situation involving alleged sloppiness in producing evidence arose in the case of Glover v. State. In this case, Bruce Glover was charged with capital sexual battery under section 794.011(2)(a) of the Florida Statutes. Glover argued on appeal that the instructions given to the jury were defective because the trial court did not specifically instruct the jury that the age of the defendant was a material element of the case. The Supreme Court of Florida resolved a conflict amongst the district courts by holding that the age of the defendant is a material element. However, it upheld Glover’s conviction by holding that the proof of his age was not disputed where the thirty-seven year old defendant sat in the courtroom and the booking admission that he was born in 1964 was admitted into evidence and not disputed.

The Supreme Court of Florida considered the application of the term “carried” in Florida’s robbery statute, in State v. Burris. The case involved Daniel Burris, who reached out the window of his pickup truck and grabbed the victim’s purse while he was driving past her, knocking her off her feet and dragging her along the pavement. The relevant statute in this case enhanced the charge from a second-degree to a first-degree felony, because the accused carried a deadly weapon while committing the robbery. The court rejected an opinion by the First District Court of Appeal that interpreted “carried” to be synonymous with “possessed.” The Supreme Court of Florida applied the commonly ascribed definition to “carry” in this statute,
looking to dictionary definitions to buttress its common sense interpretation that carrying generally means holding, supporting, or bearing. As the court noted, automobiles generally carry people as opposed to people carrying automobiles. It also looked to the legislature's intent in using this term, which it perceived to be to deter robbers from bringing portable instruments to a robbery for the purpose of inflicting harm. Furthermore, although it noted that automobiles have been deemed deadly weapons in other criminal statutes, it would require an improperly broad inference in this provision, in violation of the court's duty to resolve ambiguous provisions in favor of the defendant under the statutory rules of lenity.

The State v. Castillo case involved a police officer accused of seeking or accepting unauthorized benefits in return for nonperformance of his official duty under section 838.016(1) of the Florida Statutes. In this case, the officer stopped a motorist for speeding and driving while intoxicated. According to the victim, the officer asked her to follow him in her car to a deserted warehouse area, where he proceeded to engage in vaginal intercourse with her. The Third District Court of Appeal had reversed the conviction because there was no evidence of a specific agreement stated by the parties that arrest would not occur if the victim had sex with him.

As noted by the court, the statute is silent on the type of proof required to show that the statute had been violated. However, it reasonably held that an express agreement should not be required lest defendants evade conviction by avoiding the making of explicit promises. It went further by rejecting the argument that even an implicit agreement was required since the statute also criminalized the solicitation of a benefit. It thus held that corrupt intent was sufficient to support a conviction. The latter statement is probably an overstatement of the court's true intentions because even a solicitation involves more than mere intent, and to permit conviction on intent alone would violate one of the basic tenets of criminal law in that crimes

109. Id. at 412.
110. Burris, 875 So. 2d at 412.
111. Id.
112. Id. at 415 (citing FLA. STAT. § 775.021(1) 2003)).
113. 877 So. 2d 690 (Fla. 2004).
114. Id. at 691.
115. Id.
116. Id.
117. Id. at 692.
118. Castillo, 877 So. 2d at 693.
119. Id. (citing State v. Gerren, 604 So. 2d 515, 520 (Fla. 3d Dist. Ct. App. 2002)).
120. Id. at 694.
121. Id. at 695.
must have at least some type of actus reus requirement. Nonetheless, it does seem an appropriate interpretation to hold that the statute does not require an agreement. The court found that the circumstantial evidence in this case was more than adequate here to support the police officer’s conviction.

VI. CONCLUSION

As can be seen by this review, the Supreme Court of Florida has not issued any opinions in the past two years that seem to radically alter settled criminal law principles in this jurisdiction. The battle over the proper interpretation of Florida’s burglary statute continued during the past two years and is reflective of an ongoing debate with the state legislature over the difference between interpretation of the law and creating law. In most of the substantive criminal areas addressed by the supreme court, Florida’s criminal law, and its interpretation by its highest court seems to be in line with the approach taken by most American jurisdictions at this point in time.

122. Id.
123. Castillo, 877 So. 2d at 695.
124. Id. at 696.