IN THE SUPREME COURT OF FLORIDA

JAMES WESLEY GODDARD,	)	
Petitioner,	)	
vs.	)	CASE NO.: 64,490
STATE OF FLORIDA,	)	
Respondent.	)	

RESPONDENT'S BRIEF ON THE MERIT

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TABLE OF CITATIONS

TOPICAL INDEX

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RESPONDENT'S BRIEF ON THE MERIT

Respondent accepts the preliminary statement set forth in the initial brief and will use the designations set out therein. References to Petitioner's Initial Brief will be by the designation "PB" followed by the appropriate page numbers.

The opinion of the Court of Appeal, First District, in this cause is now reported as:

Goddard v. State
438 So.2d 110
(Fla 1st DCA 1983)

Respondent also wishes to remind this Court that a motion to strike has been filed in this cause and pursuant to the corrected order of this Court dated December 20, 1983, has been placed in the file for the Court's consideration.

STATEMENT OF THE CASE AND FACTS

The State of Florida accepts the Statement of the Case and Facts as presented in the initial brief on the merit as being a substantially accurate recitation of the events and evidence below.

QUESTION CERTIFIED

> DID THE FLORIDA LEGISLATURE INTEND TO PUNISH UNDER SECTION 812.019(2), FLORIDA STATUTES, THE COMMON THIEF WHO TRAFFICS IN THE GOODS WHICH HE HAS INDIVIDUALLY STOLEN, OR WAS THAT PROVISION INTENDED TO ONLY PUNISH ONE WHO ACTS AS A "RINGLEADER" IN THE ORGANIZING OF THEFTS AND TRAFFICS IN THE STOLEN GOODS.

Goddard v. State, 438 So.2d 110, (Fla. 1st DCA 1983).

The question presented herein was certified as being of great public importance. Id at 112. Petitioner's first appellate argument is not responsive to this question.

The second issue raised in Petitioner's brief was not certified and is not properly before this court. (See Respondent's Motion to Strike currently pending.)

STATUTE INVOLVED

The certified question presented herein requires interpretation of Florida's Statute for "Dealing in Stolen Property" which states as follows:

> (1) Any person who traffics in, or endeavors to traffic in, property that he knows or should know was stolen shall be guilty of a felony of the second degree, punishable as provided in ss. 775.082, 775.083, and 775.084.
>
> (2) Any person who initiates, plans, finances, directs, manages, or supervises the theft of property and traffics in such stolen property shall be guilty of a felony of the first degree, punishable as provided in ss. 775.082, 775.083, and 775.084.

Section 812.019 (1977). The instant certified question is expressly directed toward Subsection (2).

POINT ON APPEAL

THE FLORIDA LEGISLATURE INTENDED TO PUNISH UNDER SECTION 812.019(2), FLORIDA STATUTES, AN INDIVIDUAL WHO TRAFFICS IN THE GOODS WHICH HE HAS INDIVIDUALLY STOLEN.

ARGUMENT

The single question presented for review by the Court of Appeal, First District, is whether Florida's Dealing in Stolen Property Statute[1] was intended by the Legislature to apply to the "common thief who traffics in the goods which he has individually stolen" or only to those individuals who act as a "ringleader" in the organization of thefts and traffic in the stolen goods. Goddard v. State, 438 So.2d 110. (Fla. 1st DCA 1983). The District Court concluded that the Legislature had intended application to an individual and affirmed Petitioner's conviction and sentence. Id. We submit the statutory interpretation of the Court of Appeal was correct.

Petitioner has not even attempted to demonstrate how the reasoning of the appellate court is in error or why the statute, as interpreted, cannot apply to his circumstances. (PB 20-21) Instead Petitioner argues the trial court

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[1] Section 812.019, Florida Statutes (1977). This particular statutory enactment is a portion of Florida's Anti-fencing Act of 1977.

erred in denying his motion for judgment of acquittal posed at the close of the State's case in chief. (T123)

This is the identical argument advanced before the district court of appeal. However the argument (rationale and authority) was never presented at the trial level. Id. Petitioner's trial counsel made a generalized insufficiency of evidence argument in seeking a judgment of acquittal. Id. In De La Cova, 255 So.2d 1227, 1230 (Fla. 3d DCA 1978), the Third District Court of Appeal held that a "bare bones" motion for directed verdict does not raise every possible claim of insufficienty in the evidence. See also, Kujawa v. State, 405 So.2d 251 (Fla. 3d DCA 1981). The State submits the record is insufficient to preserve the challenge to statutory interpretation[2] posed on appeal. There is no allegation that the issue is fundamental; clearly, it is not. The issue has not been presented to the trial court, and therefore, has not been

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[2] In brief before the Court of Appeal Goddard relied heavily upon legislative history in the form of House Committee bills, notes, etc., but also upon tape recorded minutes of committee hearings and debates. These sources of authority were never presented to the trial court. The argument itself was not even presented. Moreover, the documents and minutes were never included within the appellate record for the perusal of the Court of Appeal. The State moved to Strike the initial brief or to require supplementation of the authority relied upon, inasmuch as it was available only from the State Archives. The motion was denied. In his brief before this Court, Goddard again relies upon the same authority. (PB 19-26, especially footnotes 8-13). While this is the only

properly preserved for appellate review. Pinder v. State, 396 So.2d 272 (Fla. 3d DCA 1981); Clark v. State, 363 So.2d 331 (Fla. 1978); State v. Cumbie, 380 So.2d 1031 (Fla. 1980).

Goddard maintains that Section 812.019(2), Florida Statutes (1979) cannot apply to him as the "primary element of proof under [the subsection] obviously requires proof of some act in addition to and beyond mere theft." (PB 17, emphasis in the original.) This is not so. The official "Summary of HB 2149[3] Relating to Stolen Property" states in pertinent part:

> Provides a second degree felony penalty for a person who traffics in or attempts to traffic in stolen property. Provides a third degree felony penalty for a person who organizes or initiates a theft and who traffics in or attempts to traffic in stolen property.

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2 Continued
portion of Appellant's brief which addresses the certified question, the authority relied upon, which is difficult to obtain, should be submitted to this Court for full consideration by all involved. Petitioner cites portions, but it is conceivable that the quotes are amenable to multiple interpretations or are taken out of context. Appendixed to this brief are the documents forwarded to Respondent by Petitioner's appellate counsel. The minutes are not included. Prior to consideration of these documents, the record should be supplemented with same. Should this Court so order, Respondent will seek to obtain the documents and supplement the record. However the burden is clearly upon the movant who seeks to overturn the ruling of the trial court and the district court of appeal.

3 HB 2149 was the House of Representatives companion bill to SB 1431.

(See, Appendix, Exhibit D). The corresponding summary of Senate Bill 1431 states:

> The bill makes a crime to traffic in stolen property and makes it a more severe crime to initiate, organize, plan, finance, direct, manage or supervise a theft and traffic in stolen property....

(See, Appendix, Exhibit A, p.1) In the same Summary under Section II, Purpose, Subsection B, Effect on Present Situation, the Senate summary states:

> The bill creates two new classes of crime: the first trafficking in stolen property, and the second and more severe crime, theft and trafficking in stolen property.

Id; Exhibit A at p.2. Corresponding to this expression of legislative intent, the First District reasoned that the statute was "intended to apply to... a common thief who individually stole the goods in question and then trafficked in same." Goddard v. State at 111 (footnote omitted). The per curium opinion continued:

> It is well-settled rule that where the language of a statute is plain, unambiguous, and conveys a clear and definite meaning, resort to rules of statutory interpretation to ascertain legislative intent is unnecessary. The Legislature is held to have intended that which it plainly expressed.
>
> We find the language of Section 812.019(2), Florida Statutes, plain and unambiguous. The word "or," a disjunctive article, as used in the context of Section 812.019(2), Florida Statutes, prohibits the doing of either or any act so joined. Clearly, one who actually commits a theft also, at least, initiates and plans it, each

> act of which is proscribed by Section 812.019(2).

Id. Thus while Petitioner Goddard's interpretation (that the statute is intended to apply to a "master fence or kingpin of organized theft", i.e. a ringleader) may also be accurate, so to is the statute's application to an individual thief who also traffics. Such application is logical because the ringleader commits the theft vicariously, even if not physically present.

The argument advanced herein is remarkably similar to the statutory interpretation argued in State v. Bowen, 413 So.2d 798 (Fla. 1st DCA 1982) rehearing denied. There the defendant contended Florida's Racketeering Influenced and Corrupt Organization (RICO) Act[4] did not apply to an individual conducting a sole proprietorship in a pattern of racketeering activity. Bowen maintained the legislature did not contemplate an individual associating with an "enterprise" that is himself, in a "pattern of racketeering activity". The Court of Appeals, First District, held to the contrary relying upon the "plain and unambiguous language of the statute." Id at 799. The drafting of the instant statute lends itself to the same conclusion. Had the legislature not intended to reach individuals such as Bowen and Goddard, it could easily have narrowed the sweep of the statutory provisions. Id.

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[4] Section 943.462(3), Florida Statues.

It is well settled that the courts are not concerned with the wisdom or motives of the legislature in enacting a law; the proper concern is with the validity of the enactment when measured by organic requirements. State v. Reese, 222 So.2d 732, 736 (Fla. 1969) rehearing denied. The Legislature has broad discretion in determining necessary measures for the protection of the public, health, safety, and welfare, and the courts, not even the State's highest court, may substitute its judgment for that of the legislature concerning the wisdom or policy of a legislative act. State v. Yu, 400 So.2d 762, 765 (Fla. 1981) rehearing denied; Hamilton v. State, 366 So.2d 8 (Fla. 1978), Griffin v. Sharpe, 65 So.2d 751 (Fla. 1953). Hence it is not for the courts to question a policy judgement, but simply to apply it. State v. Tsavaris, 394 So.2d 418, 424 (Fla. 1981) rehearing denied. Courts may not pass on the wisdom of legislative determinations. Rose v. D'Alessandro, 380 So.2d 419 (Fla. 1980).

The primary and overriding consideration in statutory interpretation is what effect must be given by the courts to the intent of the Legislature. Griffis v. State, 356 So.2d 297 (Fla. 1978); Hutchinson v. State, 315 So.2d, 546 (Fla. 1975), Beebe ex us v. Richardson, 156 Fla. 559, 23 So.2d 718, 719 (1945). Furthermore, the courts are not to construe a statute so strictly as to "emasculate" the statute and defeat the obvious legislative intent. Associated Dry Goods Corporation v. Department of Revenue,

335 So.2d 832 (Fla. 1st DCA 1976); State v. Nunez, 368 So.2d 422 (Fla. 3d DCA 1979); Martin v. State, 367 So.2d 1119 (Fla. 1st DCA 1979). A statute should be interpreted and applied so as to give effect to the obvious intent of the Legislature regardless of whether such construction varies from the statute's literal meaning. Hutchinson v. State; State v. Beasley, 317 So.2d 750 (Fla. 1975); Florida Jai Alai, Incorporated v. Lake Howell Water and Reclamation District, 274 So.2d 522 (Fla. 1973); Deltona Corporation v. Florida Public Service Commission, 200 So.2d 905 (Fla. 1969); Beebe v. Richardson. The words of the legislature are to be construed in their "plain and ordinary sense". Pederson v. Green, 105 So.2d 1 (Fla. 1958). Further, statutes must be construed so as to avoid absurd results. Dorsey v. State, 402 So.2d 1178, 1183 (Fla. 1981); Realty Bond & Share Company v. Englar, 104 Fla. 329, 143 So. 152 (1932).

When the Dealing in Stolen Property Statute is analyzed in this light, it is apparent that the purpose of the statute is to prohibit the theft and resale (i.e. trafficking) of stolen goods. The statute prohibits theft and trafficking whether committed by an individual or a ringleader.

Petitioner argues the instant cause is a case of first impression (PB 15) and the statutory provision in question "has nowhere been interpreted by the courts of this state"... (PB 17). These statements overlook the

finding below of the Court of Appeal, First District, Goddard v. State.

Petitioner Goddard has failed to establish error in the reasoning of the appellate court (PB 20-21). Reliance upon the quoted portion of Washington v. State, 378 So.2d 852, 853 (Fla. 4th DCA 1979) is of no moment. It is obvious the elements of burglary, grand theft and dealing in stolen property differ. Neither Burglary nor grand theft requires the additional element of trafficking or sale after theft. Petitioner's attempt to distinguish the instant statute on this basis is contrary to the clear meaning of authority cited. (See the previously quoted portions of SB 1431 and HB 2149 pp. 7-8 supra; see also, Exhibits A and D).

Petitioner argues the legislative intent is "to reach fencing operations" (PB 21). He steadfastly refuses to admit that his acts constitute such an operation. His resolve is not persuasive. Petitioner may not comprise the "sophisticated" organizational activity described in brief, yet his actions clearly violate the prohibitions of the statute as expressed by the Legislature. Goddard's argument disregards the Florida Anti-Fencing Act which does not distinguish between a neighborhood fence, a small scale fence, or a "master" fence.

The State submits that there was sufficient evidence of Goddard's guilt as to initiating, organizing, planning, financing, directing, managing or supervising the theft of

stainless steel building parts. Petitioner concedes the record contains evidence of trafficking in stolen property. Goddard v. State at 111, footnote 2.

The evidence at trial revealed that over a period of weeks a series of thefts plagued the Sharman Company, a Jacksonville manufacturer of stainless steel building parts. The record indicates that Sharman Company employees were of the opinion that more than one individual backed a truck up to the factory fence. Then, going under or over the fence, someone removed the stainless steel parts and handed them over or under the fence to be placed in the truck. (R 136).

At trial, a friend of the Sharman family, Mr. Robin Clark, testified that he was aware of the series of thefts plaguing the Sharman Company. Mr. Clark testified that he observed an old green truck with plywood panels carrying stainless steel elbows or parts at 11:00 o'clock one night near the Sharman Company plant. (T 115-117). Furthermore Mr. Clark testified the truck was driven by a single occupant, a white fellow, about 30 with a bushy moustache and a stocking cap. (T 119-121). Clark attempted to get the truck's tag number, but could not find a tag on the green truck carrying the stainless steel elbow parts stacked in the back. (T 117-120). Clark promptly reported his observations to his friend Sharman. (T 121).

Mr. Albright, a Commercial Metals Company employee, testified that he bought stainless steel parts from

Goddard on three (3) occasions: April 29, 1983; March 8, 1983; and February 22, 1983. (T 57,60,63). Mr. Albright also stated that the Appellant delivered the stainless steel fittings in an early model, stake-body, green Ford truck. Mr. Sharman testified that the stainless steel fittings observed at Commercial Metals Company were products stolen from his company. He identified the parts by the "Sharmweld" logo, by the job identification number, and by a company inventory which showed the identification number. (T 21-23).

Goddard testified at trial and stated that he had been in the junk business about two (2) years and was paid approximately fifteen cents (15¢) per one hundred (100) pounds of stainless steel. (T.153). Petitioner stated that he paid a black male called Charlie, eighty (80) dollars for the stainless steel parts, and sold the stainless steel on April 29, 1983, to Commercial Metals for one hundred forty (140) dollars. (T 163). The victim, Mr. Sharman, had previously testified that the items sold to Commercial Metals on that date were priced at approximately four thousand dollars. (T 17-18, 20).

In addition to the facts presented at trial, the jury was instructed on two (2) inferences. The first inference stated that proof of possession of recently stolen property unless satisfactorily explained gives rise to an inference that the person who is in possession of that property knew or should have known that the property had

been stolen. (T 276). The second inference stated that proof of the purchase or sale of stolen property at a price which is substantially below the fair market value (unless satisfactorily explained) gives rise to an inference that the person buying or selling the property knew or should have known that the property had been stolen. (T 276).

From the facts briefly summarized above, with the conclusions supported by the included inferences, the State submits that sufficient evidence was presented for a reasonable minded jury to return a verdict of guilty. On this basis the Court of Appeal affirmed Goddard's verdict and sentence.

The reviewing court must interpret the evidence and the reasonable inferences therefrom in a manner most favorable to the trial court. McNamara v. State, 357 So.2d 410 (Fla. 1978); Smith v. State, 378 So.2d 281 (Fla. 1979) When the evidence is viewed in this light, there is sufficient evidence from which this Court can conclude that Petitioner committed the theft from the Sharman Company and sold the merchandise to Commercial Metals. Petitioner violated the "plain and unambiguous" meaning of Section 812.019(2), Florida Statues. We respectfully submit the certified question should be answered affirmatively and applied to Petitioner Goddard acting in an individual capacity.

CONCLUSION

Based on the foregoing arguments and the authorities cited herein, Petitioner, the State of Florida, respectfully urges this Honorable Court answer the certified question in the affirmative thereby affirming the opinion of the Court of Appeal, First District, and removing all doubt that Section 812.019(2), Florida Statutes, may be applied to an individual who traffics in the goods he has individually stolen.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by mail to Gwendolyn Spivey, Esquire, Assistant Public Defender, Post Office Box 671, Tallahassee, Florida 32301, this 3rd day of January, 1984.

Barbara Ann Butler
Assistant Attorney General

BAB/rsb
AGSB612.29