

IN THE SUPREME COURT OF FLORIDA

JAMES WESLEY GODDARD,

Petitioner,

v.

CASE NO. 64,490

STATE OF FLORIDA,

Respondent.

FILED

S'D J. WHITE

JAN 26 1984

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

PETITIONER'S REPLY BRIEF ON THE MERITS

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TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF CONTENTS	i
TABLE OF CITATIONS	ii
I PRELIMINARY STATEMENT	1
II ARGUMENT	
<u>ISSUE I</u>	
THE TRIAL COURT ERRED BY DENYING PETITIONER'S MOTION FOR JUDGMENT OF ACQUITTAL.	2
CERTIFICATE OF SERVICE	4

TABLE OF CITATIONS

<u>STATUTES</u>	<u>PAGE(S)</u>
Section 812.019(2), Florida Statutes	2,3
Section 812.025, Florida Statutes	2

II ARGUMENT

ISSUE I

THE TRIAL COURT ERRED BY DENYING PETITIONER'S MOTION FOR JUDGMENT OF ACQUITTAL.

First, respondent fails to address or even cite the primary flaw of the district court opinion and the state's position: i.e., the statutory construction advanced by respondent and the district court -- that a defendant can be convicted under §812.019(2), Florida Statutes, by proof that he committed a theft and then trafficked in the stolen property -- is directly contrary to §812.025, Florida Statutes, which prohibits such a simultaneous conviction. It is clear from this perspective alone that the district court decision is erroneous. See also, PB-16,19-20 and Appendix A, paragraph 4.


Second, respondent incorrectly asserts that petitioner's argument is not responsive to the certified question. This issue was raised in the trial court in a motion for judgment of acquittal and was presented to the district court as an erroneous denial of that motion. The only difference between the question certified to this Court and petitioner's framing of the issue here is one of semantics. Specifically, petitioner still contends that a judgment of acquittal was proper because the state wholly neglected to introduce any proof of the first element under Section 812.019(2) ("that the defendant initiated, organized, planned, financed, directed, managed, or supervised the theft.") but rather only proved that petitioner committed theft; petitioner maintains that his conviction

could only be affirmed by construing the statutory language (specifically "initiates . . . plans . . . the theft") to mean no more than the simple planning and initiating inherent in any intentional act. If that were the intent, why did the Legislature use such specific definitional language rather than the simple words "committed theft"? Nevertheless, this extremely broad construction was adopted by the district court, resulting in their particular phraseology of the certified question which focused on the difference between a common thief and a ringleader of organized thefts.

Finally, respondent relies on the distinction -- which petitioner has not advanced and does not accept -- between an individual and an organization. To the extent this distinction is attributed to petitioner, respondent is mistaken. Obviously, the common denominator of any theft is particular acts by individuals; however, to resolve this issue, one must distinguish between the nature and quality of those acts. Petitioner draws the distinction between an individual who commits thefts ("common thief") and trafficks in the stolen property and an individual with the status, organization and insulation available only to organized, sophisticated fences. As the research which formed the foundation for the Florida Anti-Fencing Act makes clear, the organized fence sought for prosecution under §812.019(2) is rarely if ever involved in

the actual taking of the property. See PB-22-26, and n. 13.

Respectfully submitted,


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. Mail to Barbara Butler, Assistant Attorney General, Suite 513, Duval County Courthouse, Jacksonville, Florida 32202 and to petitioner, James Wesley Goddard, #054141, Marion Correctional Institution, Post Office Box 158, Lowell, Florida 32663 on this 26th day of January, 1984.


GWENDOLYN SPIVEY