

IN THE SUPREME COURT OF FLORIDA

01A1-7-88

CASE NO. 70,779

K.C., a juvenile,
Petitioner,

vs.

THE STATE OF FLORIDA,
Respondent.

DEC 10 1977
COURT
Deputy Clerk

ON PETITION FOR DISCRETIONARY REVIEW
FROM THE DISTRICT COURT OF APPEAL OF
FLORIDA, THIRD DISTRICT

REPLY BRIEF OF PETITIONER ON THE MERITS

BENNETT H. BRUMMER
Public Defender
Eleventh Judicial Circuit of
Florida
1351 Northwest 12th Street
Miami, Florida 33125
Telephone: (305) 545-3003

HOWARD K. BLUMBERG
Assistant Public Defender

Counsel for Petitioner

TABLE OF CONTENTS

	<u>PAGE</u>
INTRODUCTION.....	1
ARGUMENT.....	2
THE CLEAR AND UNEQUIVOCAL LANGUAGE OF SECTION 812.015(6), FLORIDA STATUTES (1983) ESTAB- LISHES THAT AN ESSENTIAL ELEMENT OF THE OFFENSE OF RESISTING A MERCHANT IS THAT THE ACCUSED BE SUBSEQUENTLY FOUND TO BE GUILTY OF THEFT OF THE SUBJECT MERCHANDISE, AND AS A RESULT A FINDING OF GUILT ON THE THEFT CHARGE IS REQUIRED BEFORE AN INDIVIDUAL CAN BE CHARGED WITH RESISTING A MERCHANT.	
CONCLUSION.....	6
CERTIFICATE OF SERVICE.....	7

TABLE OF CITATIONS

PAGE

OTHER AUTHORITIES

FLORIDA STATUTES

§ 812.014.....	3, 4
§ 812.015.....	2, 5
§ 812.015(6) (1983).....	2, 3, 4
§ 812.019.....	4
§ 812.025 (1985).....	3, 4

IN THE SUPREME COURT OF FLORIDA

CASE NO. 70,779

K.C., a juvenile

Petitioner,

vs.

THE STATE OF FLORIDA,

Respondent.

ON PETITION FOR DISCRETIONARY REVIEW
FROM THE DISTRICT COURT OF APPEAL OF
FLORIDA, THIRD DISTRICT

REPLY BRIEF OF PETITIONER ON THE MERITS

INTRODUCTION

In this reply brief, as in the initial brief, all emphasis is supplied unless the contrary is indicated.

ARGUMENT

THE CLEAR AND UNEQUIVOCAL LANGUAGE OF SECTION 812.015(6), FLORIDA STATUTES (1983) ESTABLISHES THAT AN ESSENTIAL ELEMENT OF THE OFFENSE OF RESISTING A MERCHANT IS THAT THE ACCUSED BE SUBSEQUENTLY FOUND TO BE GUILTY OF THEFT OF THE SUBJECT MERCHANDISE, AND AS A RESULT A FINDING OF GUILT ON THE THEFT CHARGE IS REQUIRED BEFORE AN INDIVIDUAL CAN BE CHARGED WITH RESISTING A MERCHANT.

In its brief, respondent agrees that section 812.015(6), Florida Statutes (1983) must be construed and applied so as to give effect to the evident legislative intent behind the statute (Brief of Respondent at 8). Respondent also agrees that the "clear" intent of the legislature in enacting section 812.015 is in part to protect customers from groundless accusations. (Brief of Respondent at 9). Yet respondent asserts that a customer can be charged with the offense of resisting a merchant in violation of section 812.015(6) before he has been convicted of the theft of the subject merchandise because that section of the statute only protects customers from being wrongly convicted of that offense.

The inconsistency of respondent's position is readily apparent. If, as the state agrees, the legislative intent behind section 812.015 is to protect customers from false accusations, then a customer cannot even be charged with the offense of resisting a merchant as defined in section 812.015(6) until after he has been convicted of theft of the subject merchandise. To ensure that a customer could not be charged with the offense of resisting a merchant until after he had been convicted of theft, the legislature made a subsequent conviction of theft an essential element of the offense of resisting a merchant.

Respondent's attempted analogy to section 812.025, Florida Statutes (1985) is not at all persuasive. Section 812.025 authorizes charging a defendant with both theft and dealing in stolen property in a single indictment or information, but provides that a guilty verdict can only be returned on one of the counts. The statute does not purport to change the elements of either the offense of theft as defined in section 812.014, or the offense of dealing in stolen property as defined in section 812.019. Nor does the statute purport to define a separate criminal offense, with an essential element of that offense being a subsequent conviction of a different offense.

Section 812.015(6) bears no resemblance to section 812.025. Section 812.015(6) defines the separate criminal offense of resisting a merchant, and makes a subsequent conviction of theft an essential element of that offense. Had the legislature intended to prevent only wrongful convictions of resisting a merchant, rather than preventing wrongful accusations of that offense, then a statute similar to section 812.025 would have been enacted and section 812.015(6) would not contain any requirement of a subsequent conviction of guilt. Such a statutory scheme would provide as follows:

Resisting a merchant.--

An individual who resists the reasonable efforts of a merchant to recover property which the merchant had probable cause to believe the individual had concealed or removed from its place of display or elsewhere is guilty of a misdemeanor of the first degree.

Charging theft and resisting a merchant--

A single indictment or information may, under proper circumstances, charge theft and resisting a merchant in separate counts that may be consolidated for trial, but the trier of fact may not return a guilty verdict on the charge of resisting unless it also returns a guilty verdict on the charge of theft of the subject merchandise.

Under such a statutory scheme, which would closely resemble the scheme established by sections 812.014, 812.019, and 812.025, it would be clear that an individual could be charged with resisting a merchant before he had been convicted of theft of the subject merchandise. However, the legislature did not choose to set up such a statutory scheme. Instead, the legislature placed the requirement of a subsequent finding of guilt of theft in the very clause which defines the crime of resisting a merchant. In doing so, the legislature plainly made the subsequent theft conviction an essential element of the offense of resisting a merchant, and plainly established that an individual cannot be charged with the offense of resisting a merchant until there has been a finding of guilt on the theft charge.

At the conclusion of its brief, respondent asks the question: "Does anyone seriously believe that the Legislature intended two separate judicial proceedings in these cases?" (Brief of Respondent at 11). This question need not be answered to render a decision in the present case. The only question which must be answered is: Did the legislature intend that an individual could not be charged with the offense of resisting a merchant until after he had been convicted of theft of the subject merchandise? The express language of section 812.015(6) and the

legislative history of section 812.015 mandate an affirmative response to this question. The fact that two separate judicial proceedings are needed in these cases is simply the natural consequence of this legislative intent. If the legislature is dissatisfied with this consequence of its actions, it can change the statute. As the statute is presently written, however, it requires that an individual cannot be charged with the offense of resisting a merchant until there has been a finding of guilt of theft of the subject merchandise. The decisions of the First and Fifth District Courts of Appeal enforcing this requirement should be approved by this Court, and the decision of the Third District Court of Appeal to the contrary should be quashed.

CONCLUSION

Based on the foregoing facts, authorities and arguments, petitioner respectfully requests this Court to quash the decision of the Third District Court of Appeal, and direct that Court to reverse petitioner's adjudications of delinquency for resisting a merchant.

Respectfully submitted,

BENNETT H. BRUMMER
Public Defender
Eleventh Judicial Circuit of
Florida
1351 Northwest 12th Street
Miami, Florida 33125

By: 

HOWARD K. BLUMBERG
Assistant Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed to the Office of the Attorney General, 401 Northwest 2nd Avenue, Miami, Florida, this 8th day of December, 1987.



HOWARD K. BLUMBERG
Assistant Public Defender