

IN THE SUPREME COURT OF FLORIDA

JOHN EUMMELL BRIGHT, and)
 ARTHUR DAVIS,)
)
 Petitioners,)
)
 vs.)
)
 STATE OF FLORIDA,)
)
 Respondent.)
 _____)

CASE NO. 65,689

REPLY BRIEF OF PETITIONERS

JAMES B. GIBSON
 PUBLIC DEFENDER
 SEVENTH JUDICIAL CIRCUIT

DAVID A. HENSON
 ASSISTANT PUBLIC DEFENDER
 1012 South Ridgewood Avenue
 Daytona Beach, Florida 32014-6183
 Phone: 904/252-3367

ATTORNEY FOR PETITIONERS

FILED
 SD & WHITE
 OCT 15 1984

CLERK, SUPREME COURT

By _____ *pl*
 Chief Deputy Clerk

TABLE OF CONTENTS

	<u>PAGE NO.</u>
TABLE OF CONTENTS	i
TABLE OF CITATIONS	ii
ARGUMENT	
IN REPLY TO THE STATE AND IN SUPPORT OF THE CONTENTION THAT THE FIFTH DISTRICT COURT OF APPEAL ERRED IN UPHOLDING THE CONSTITUTIONALITY OF SECTION 817.563, FLORIDA STATUTES (1981).	1
CONCLUSION	2
CERTIFICATE OF SERVICE	2

TABLE OF CITATIONS

CASES CITED:

PAGE NO.

Bell v. State
394 So.2d 979 (Fla. 1981) 1

Morissette v. United States
342 U.S. 246, 72 S.Ct. 240, 96 L.Ed 288 (1952) 1

State v. Oxx
417 So.2d 287 (Fla. 5th DCA 1982) 1

OTHER AUTHORITIES:

Section 817.563, Florida Statutes (1981) i,1

ARGUMENT

IN REPLY TO THE STATE AND IN SUPPORT
OF THE CONTENTION THAT THE FIFTH
DISTRICT COURT OF APPEAL ERRED IN
UPHOLDING THE CONSTITUTIONALITY OF
SECTION 817.563, FLORIDA STATUTES
(1981).

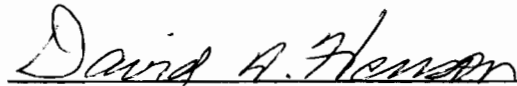
In its brief the Respondent/State has argued, in part, that there is no constitutional restraint on the power of the Legislature to dispense with the element of specific intent when enacting a fraud statute. However, the Petitioners respectfully submit that the State's position fails to recognize the distinction which should be drawn between statutes which codify common law crimes (such as fraud) and statutes that proscribe conduct not prohibited at common law. The Petitioners contend that Section 817.563, Florida Statutes (1981), was enacted as a fraud measure. As such, it seeks to prohibit a category of crime properly classified as mala in se, rather than mala prohibita. See, e.g., Morissette v. United States, 342 U.S. 246, 72 S.Ct. 240, 96 L.Ed 288 (1952); Bell v. State, 394 So.2d 979 (Fla. 1981); State v. Oxx, 417 So.2d 287 (Fla. 5th DCA 1982). Therefore, Petitioners contend that the Florida Legislature was not at liberty to dispense with the intent element when codifying Section 817.563, which proscribes the sale of any substance in lieu of a controlled substance. Petitioners continue to urge this Court to reverse the decision of the Fifth District Court of Appeal for the reasons set forth in their first brief.

CONCLUSION

BASED UPON the foregoing argument, policies, and authorities, the Petitioners requests this Honorable Court to reverse the decision of the Fifth District Court of Appeal, and remand with directions to discharge Petitioners.

Respectfully submitted,

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT



DAVID A. HENSON
ASSISTANT PUBLIC DEFENDER
1012 South Ridgewood Avenue
Daytona Beach, Florida 32014-6183
Phone: 904-252-3367

ATTORNEY FOR PETITIONERS

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that a true and correct copy of the foregoing has been served upon the Honorable Jim Smith, Attorney General, 125 N. Ridgewood Avenue, Fourth Floor, Daytona Beach, Florida 32015; and mailed to John Eummell Bright, 835 Douglas Avenue, Winter Park, Florida 32789, on this 4th day of October, 1984.



DAVID A. HENSON
ASSISTANT PUBLIC DEFENDER