

IN THE SUPREME COURT OF FLORIDA

BOBBY BROWN,
Petitioner,
vs.
STATE OF FLORIDA,
Respondent.

CASE NO. 66,032

FILED
SID J. ...

APR 11 1985

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

RESPONDENT'S BRIEF ON THE MERITS

JIM SMITH
ATTORNEY GENERAL

RICHARD B. MARTELL
ASSISTANT ATTORNEY GENERAL
125 N. Ridgewood Avenue
Fourth Floor
Daytona Beach, Florida 32014
(904) 252-2005

COUNSEL FOR RESPONDENT

TOPICAL INDEX

	<u>PAGES</u>
<u>SUMMARY OF ARGUMENT</u> -----	1
<u>ISSUE ON CERTIORARI</u>	
THE DECISION OF THE FIFTH DISTRICT COURT OF APPEAL, <u>BROWN V. STATE</u> , 456 So.2d 1335 (Fla. 5th DCA 1984), UPHOLDING THE CONSTITUTIONALITY OF SECTION 817.563 FLORIDA STATUTES (1983), SHOULD BE APPROVED -----	2-3
<u>CONCLUSION</u> -----	4
<u>CERTIFICATE OF SERVICE</u> -----	4

AUTHORITIES CITED

<u>CASES</u>	<u>PAGES</u>
<u>Bright v. State,</u> 10 F.L.W. 115 (Fla. February 7, 1985).....	1,2
<u>Brown v. State,</u> 456 So.2d 1335 (Fla. 5th DCA 1984).....	1,2
<u>M. P. v. State,</u> 430 So.2d 523 (Fla. 2d DCA 1983).....	2,3
<u>State v. Bright,</u> 451 So.2d 880 (Fla. 5th DCA 1984).....	2,3
<u>State v. Bussey,</u> 444 So.2d 63 (Fla. 4th DCA 1984).....	2,3
<u>State v. Bussey,</u> 10 F.L.W. 105 (Fla. February 7, 1985).....	1,2
<u>State v. Thomas,</u> 428 So.2d 327 (Fla. 1st DCA), <u>rev. denied,</u> 436 So.2d 101 (Fla. 1983).....	2,3
 <u>OTHER AUTHORITIES CITED</u>	
§ 817.563 Fla. Stat. (1983).....	1,2,3

SUMMARY OF ARGUMENT

This court should approve the decision below, Brown v. State, 456 So.2d 1335 (Fla. 5th DCA 1984), which upheld the constitutionality of section §17.563 Florida Statutes (1983), inasmuch as such action would be in accord with this court's recent decisions of State v. Bussey, 10 F.L.W. 105 (Fla. February 7, 1985), and Bright v. State, 10 F.L.W. 115 (Fla. February 7, 1985).

ISSUE ON CERTIORARI

THE DECISION OF THE FIFTH DISTRICT
COURT OF APPEAL, BROWN V. STATE,
456 So.2d 1335 (Fla. 5th DCA 1984),
UPHOLDING THE CONSTITUTIONALITY OF
SECTION 817.563 FLORIDA STATUTES
(1983), SHOULD BE APPROVED

Four district courts have passed upon the constitutionality of section 817.563 Florida Statutes (1983). Three found it to be constitutional. See State v. Thomas, 428 So.2d 327 (Fla. 1st DCA), rev. denied, 436 So.2d 101 (Fla. 1983); M.P. v. State, 430 So.2d 523 (Fla. 2d DCA 1983); State v. Bright, 451 So.2d 880 (Fla. 5th DCA 1984), approved, Bright v. State, 10 F.L.W. 115 (Fla. February 7, 1985). In its decision, State v. Bussey, 444 So.2d 63 (Fla. 4th DCA 1984), the Fourth District Court of Appeal struck down the statute. However, this court has since disapproved such decision, finding the statute constitutional. See State v. Bussey, 10 F.L.W. 105 (Fla. February 7, 1985).

At the time that this cause was on appeal in the Fifth District, this court had not rendered its decisions in Bussey or Bright. In affirming petitioner's conviction, the district court relied upon its own decision in State v. Bright, as well as upon State v. Thomas and M.P. v. State. Respondents contend that by virtue of this court's approval of Bright, and disapproval of Bussey, the instant decision should be approved. In his brief, petitioner has offered this court no good cause to recede from its recent decision of State v. Bussey. The district courts which have construed section 817.563 as requiring only a general

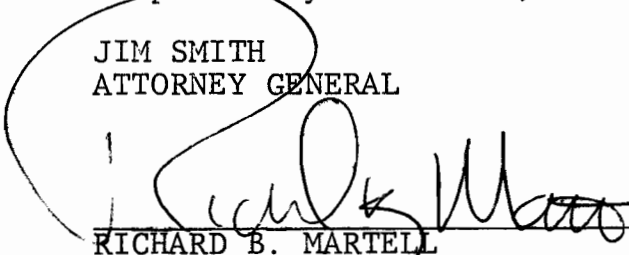
intent, that the violator intend to provide a substance other than the controlled one agreed upon, were correct, and respondent can find nothing in this court's opinion in Bussey to suggest that any portion of Thomas, M.P. or Bright have been disapproved. Accordingly, this court should approve the decision below in all respects.

CONCLUSION

For the reasons set forth herein, respondent respectfully urges this honorable court to approve the decision below in all respects.

Respectfully submitted,

JIM SMITH
ATTORNEY GENERAL

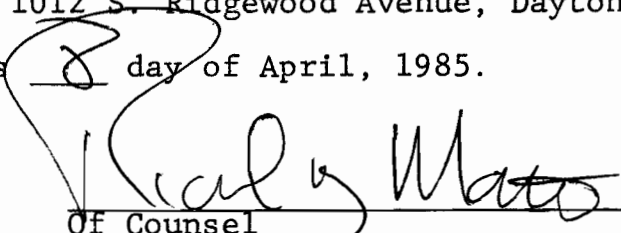


RICHARD B. MARTELL
ASSISTANT ATTORNEY GENERAL
125 N. Ridgewood Avenue
Fourth Floor
Daytona Beach, Florida 32014
(904) 252-2005

COUNSEL FOR RESPONDENT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been furnished by mail to Brynn Newton, Assistant Public Defender, 1012 S. Ridgewood Avenue, Daytona Beach, Florida 32014, this 8 day of April, 1985.



Of Counsel
Richard B. Martell