

IN THE SUPREME COURT OF FLORIDA

DEBBIE ANN TODD,
Petitioner,
vs.
STATE OF FLORIDA,
Respondent.

CASE NO. 66,061

RESPONDENT'S BRIEF ON JURISDICTION

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FILED
SID J. WHITE
NOV 19 1984
CLERK, SUPREME COURT.
By _____
Chief Deputy Clerk

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POINT ARGUMENT

THE INSTANT DECISION OF
THE DISTRICT COURT, TODD
V. STATE, 455 So.2d 1154
(FLA. 5th DCA 1984), EX-
PRESSLY AND DIRECTLY CON-
FLICTS WITH STATE V.
BUSSEY, 444 So.2d 63 (FLA.
4th DCA 1984).

Section 817.563 Fla. Stat. (1983) provides that it is unlawful for any person to agree, consent or in any manner offer to unlawfully sell to any person a controlled substance, named or described in § 893.03, and then to sell to such person any other substance in lieu of such controlled substance. Three district courts have found this statute to be constitutional. See State v. Thomas, 428 So.2d 327 (Fla. 1st DCA), cert. 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). One has found to the contrary. See State v. Bussey, 444 So.2d 63 (Fla. 4th DCA 1984). State v. Bussey is presently before this Court on direct appeal and has been assigned Case No. 64,966. The respondents in Bright have sought certiorari and, on the basis of certified conflict with Bussey, such decision is also before this Court and has been assigned Case No. 65,689.

In the instant decision, the Fifth District relied upon its prior decision of State v. Bright in affirming the conviction and sentence at issue; the court noted that its decision was contrary to Bussey. In light of the obvious conflict between Bright and Bussey, it is appropriate that

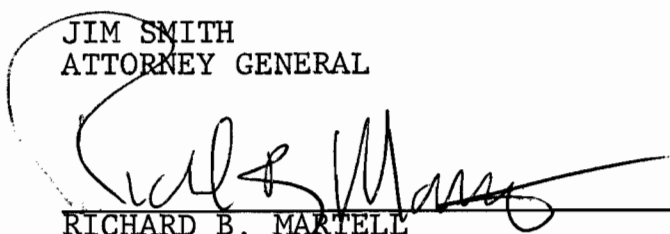
this Court accept jurisdiction of the instant proceeding. In light of the fact, however, that such cases have already been fully briefed, and in one instance argued, Respondent files concurrently herewith a motion for the instant case to travel together with Bright, in that, in all likelihood, this Court's disposition of Bussey and Bright will resolve any issue raised by Petitioner sub judice. Respondent prefers this course of action to the outright consolidation suggested by Petitioner in her brief.

CONCLUSION

WHEREFORE, for the aforementioned reasons, Respondent has no objection to this Court's acceptance of jurisdiction of the instant proceeding.

Respectfully submitted,

JIM SMITH
ATTORNEY GENERAL

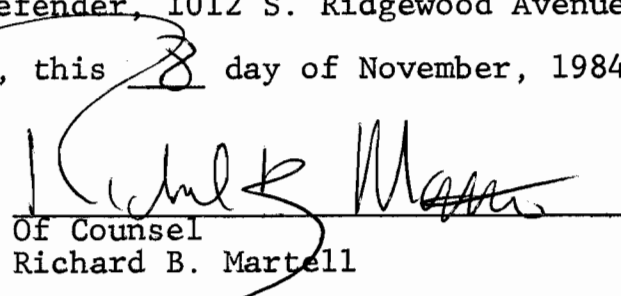


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been furnished by delivery to Michael S. Becker, Assistant Public Defender, 1012 S. Ridgewood Avenue, Daytona Beach, Florida, 32014, this 8 day of November, 1984.



Of Counsel
Richard B. Martell