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SUMMARY OF ARGUMENT

This court should approve the decision below, Todd v. State, 455 So.2d 1154 (Fla. 5th DCA 1984), which upheld the constitutionality of section 817.563 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, TODD V. STATE,  
455 So.2d 1154 (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, and, inferentially, 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 her 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 has 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 fo approve the decision below in all respects.

Respectfully submitted,

JIM SMITH  
ATTORNEY GENERAL

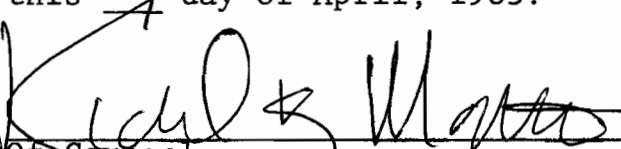


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been furnished by mail to Michael S. Becker, Assistant Public Defender, 1012 S. Ridgewood Avenue, Daytona Beach, Florida 32014, this 9 day of April, 1985.



Of Counsel  
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