



**COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH**

NO. 02-14-00407-CR

THE STATE OF TEXAS

STATE

V.

FRANK EMPEY

APPELLEE

FROM 271ST DISTRICT COURT OF WISE COUNTY
TRIAL COURT NO. CR17613

CONCURRING OPINION

Because I agree that Appellee has not established that the statute *always* operates unconstitutionally—the standard that the court of criminal appeals has directed us to apply with regard to facially unconstitutional challenges like the one presented here—I join with Chief Justice Livingston’s opinion in both reasoning and result. I write separately only to express that while I share the concerns regarding the statute raised by the trial court in its findings of fact and

conclusions of law and by Justice Dauphinot in her dissenting opinion, I believe that the facts and arguments in this case do not present an opportunity to address the concerns raised.

/s/ Bonnie Sudderth

BONNIE SUDDERTH
JUSTICE

PUBLISH

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