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IN THE SUPREME COURT OF FLORIDA

~~FILED~~

SID J. WHITE

APR 18 1994

CLERK, SUPREME COURT

By Chief Deputy Clerk

82,558

SCOTT PAUL BOUTERS)
)
 Petitioner,)
)
 vs.)
)
 STATE OF FLORIDA,)
)
 Respondent.)
 _____)

DCA CASE NO. 93-504

Supreme Court Case No.

PETITIONER'S BRIEF ON JURISDICTION

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

✓
S.C. VAN VOORHEES
ASSISTANT PUBLIC DEFENDER
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ATTORNEY FOR PETITIONER

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TABLE OF CITATIONS

CASES CITED:

PAGE NO.

Scott Bouters v. State

19 FLW D 678 (Fla. 5th DCA March 25, 1994)

7

OTHER AUTHORITIES CITED:

Section 784.048(3), Florida Statutes

2

Section 784.048(4), Florida Statutes

1

Rule 9.030(2)(a)(i), Florida Rules of Appellate Procedure

3, 4

IN THE SUPREME COURT OF FLORIDA

SCOTT PAUL BOUTERS)	
)	
Petitioner,)	
)	
vs.)	DCA CASE NO. 93-504
)	
STATE OF FLORIDA,)	Supreme Court Case No.
)	
Respondent.)	
_____)	

PETITIONER'S BRIEF ON JURISDICTION

STATEMENT OF THE CASE AND FACTS

On September 18, 1992, Barbara Sue Akers contacted the Orange County Sheriff's office and advised them that the defendant, her ex-boyfriend, had been harassing her by calling her on the telephone and making threats. She told the sheriff that the defendant had beaten her in the past and threatened to kill her and that she had obtained a domestic violence injunction against him which was still in force. She said that the defendant had come uninvited into to her home that day and left only when the sheriff's office was called. (R 15-17)

The defendant was charged with the third-degree felony of Aggravated Stalking, Section 784.048(4), Florida Statutes.
(R 20)

The defendant filed a motion to dismiss the charge on the ground that the statute on which the charge was based was impermissibly vague and overbroad, rendering it unconstitutional as repugnant to the Due Process Clause of the Fourteenth Amendment

to the Constitution of the United States. (R 61)

A hearing was held to argue the motion, but the judge summarily denied it based solely on a reading of the defendant's previously-filed memorandum of law, without hearing any further argument from the state or the defense. (TR 2)

The defendant entered a no-contest plea to the charge on February 15, 1993, reserving the right to appeal. (R 10, 34, 35)

A sentence of 24 months in the department of corrections was imposed. (R 12)

The defendant filed a timely notice of appeal, and the case was reviewed by the 5th District Court of Appeals. The decision of the trial court was affirmed in an opinion which specifically found that Section 784.048(3), Florida Statutes, known as the Florida Stalking Law, was facially constitutional. (Appendix A)

A notice of intent to seek discretionary review was timely filed. This proceeding follows.

SUMMARY OF THE ARGUMENT

Florida Rule of Appellate procedure 9.030(2)(A)(i) provides that this Honorable Court has discretionary jurisdiction to review a decision of a district court of appeal which expressly declares valid a state statute. Thus, in the instant case, wherein the Court expressly declared Section 784.048(3), Florida Statutes constitutional, this Court has jurisdiction to accept the case for review.

ARGUMENT

THIS COURT HAS JURISDICTION TO ACCEPT THE INSTANT CASE IN WHICH THE DISTRICT COURT OF APPEAL SPECIFICALLY UPHELD THE VALIDITY OF SECTION 784.048(3), FLORIDA STATUTES.

Florida Rule of Appellate procedure 9.030(2)(A)(i) provides that this Honorable Court has discretionary jurisdiction to review a decision of a district court of appeal which expressly declares valid a state statute. In the instant case the District Court of Appeal specifically ruled Section 784.048(3), Florida Statutes to be constitutional, rejecting the argument that the statute is unconstitutionally vague. The statute involves an issue critical to the criminal justice system. This court should accept the instant case for review and decide the constitutionality of Section 784.048(3), Florida Statutes

CONCLUSION

For the reasons expressed herein, Petitioner respectfully requests that this Honorable Court exercise its discretionary jurisdiction and review the decision of the Fifth District Court of Appeal herein.

Respectfully submitted,
JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT



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CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that a true and correct copy of the foregoing has been served upon the Honorable Robert A. Butterworth, Attorney General, 210 N. Palmetto Ave., Suite 447, Daytona Beach, Fla. 32114, in his basket at the Fifth District Court of Appeal; and mailed to Scott P. Bouters, DC# 370511, Housing 5, Quad 4, Central Florida Reception Center Main Unit, Orlando, Florida 32862-8040, on this 14th day of April, 1994.



S.C. Van Voorhees
ASSISTANT PUBLIC DEFENDER

IN THE SUPREME COURT OF FLORIDA

SCOTT PAUL BOUTERS)	
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Petitioner,)	
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vs.)	DCA CASE NO. 93-504
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STATE OF FLORIDA,)	Supreme Court Case No.
)	
Respondent.)	
_____)	

A P P E N D I X

Scott Bouters v. State, 19 FLW D 678 (Fla. 5th DCA March 25, 1994)

93-236
SV

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

JANUARY TERM 1994

NOT FINAL UNTIL THE TIME EXPIRES
TO FILE REHEARING MOTION, AND,
IF FILED, DISPOSED OF.

SCOTT BOUTERS,

Appellant,

v.

CASE NO.: 93-504

STATE OF FLORIDA,

Appellee.

Opinion filed March 25, 1994

Appeal from the Circuit Court
for Orange County,
Richard F. Conrad, Judge.

James B. Gibson, Public Defender,
and S. C. Van Voorhees, Assistant Public
Defender, Daytona Beach, for Appellant.

Robert A. Butterworth, Attorney General,
Tallahassee, and Michael J. Neimand, Assistant
Attorney General, Parker D. Thomson, Special
Assistant Attorney General, and Carol A. Licko,
Special Assistant Attorney General, Miami,
for Appellee.

PER CURIAM.

The appellant, Scott Bouters, was charged with the offense of aggravated stalking pursuant to section 784.048(3), Florida Statutes (Supp. 1992), known as the Florida Stalking Law. He moved to dismiss on the ground that such statute is facially unconstitutional because of vagueness and overbreadth. Following denial of that motion, he pled nolo contendere and then filed the instant appeal. Without belaboring the issue, we find the aforesaid statute to be facially constitutional, and basically agree with the analysis of that

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1st CIR. APP. DIV.

statute as found in State v. Pallas, 1 Fla. L. Weekly Supp. 442 (Fla. 11th Cir. June 9, 1993). In respect to the argument that the definition of the word "harasses" in subsection (1)(a) of the statute is vague because of the nonspecific term "serves no legitimate purpose," we agree with the analysis in State v. Bossie, 1 Fla. L. Weekly Supp. 465, 466 (Fla. Brevard County Ct. June 22, 1993), that the statute, read in its entirety, renders that particular phrase superfluous, hence, harmless.

AFFIRMED.

DAUKSCH, COBB and GRIFFIN, JJ., concur.