

**FILED**

SID J. WHITE

APR 29 1994

IN THE SUPREME COURT OF FLORIDA

CASE NO. 83,558

CLERK, SUPREME COURT

By \_\_\_\_\_

Chief Deputy Clerk

**SCOTT PAUL BOUTERS,**

Petitioner,

-vs-

**THE STATE OF FLORIDA,**

Respondent.

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ON PETITION FOR DISCRETIONARY REVIEW

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RESPONDENT'S BRIEF ON JURISDICTION

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## INTRODUCTION

The Petitioner, SCOTT PAUL BOUTERS, was the Appellant below. The Respondent, the STATE OF FLORIDA, was the Appellee below. The parties will be referred to as they stand before this Court. The symbol "A" will designate the Appendix to this brief.

STATEMENT OF THE CASE AND FACTS

The Respondent accepts the Petitioner's statement of the case and facts as a substantially accurate account of the proceedings below.

QUESTION PRESENTED

WHETHER THIS COURT SHOULD ACCEPT JURISDICTION  
HEREIN WHERE THE DISTRICT COURT SPECIFICALLY  
UPHELD THE VALIDITY OF SECTION 748.048(3),  
FLORIDA STATUTES.

SUMMARY OF THE ARGUMENT

The Fifth District held that Florida's Stalking Statute is constitutional. Although this Court has discretionary jurisdiction hereon, the State submits that this Court should not exercise it. By refusing jurisdiction, this Court will implicitly be affirming the Fifth District's holding herein.

ARGUMENT

**THIS COURT SHOULD NOT ACCEPT JURISDICTION  
HEREIN WHEN THE DISTRICT COURT OF APPEAL  
SPECIFICALLY UPHELD THE VALIDITY OF SECTION  
748.048(3), FLORIDA STATUTES.**

This Court has the discretionary jurisdiction to hear cases where the District Court specifically held a statute constitutional. Rule 9.030(2)(A)(i) Fla. R. App. P. However, the State submits that this Court should not exercise its jurisdiction herein. The Fifth District found the statute to be facially constitutional without detailing its reasoning. The reason for such an opinion is that the stalking statute does not suffer any infirmity. Therefore, the State submits that this Court should decline jurisdiction and by so doing this Court will implicitly be affirming the Fifth District.

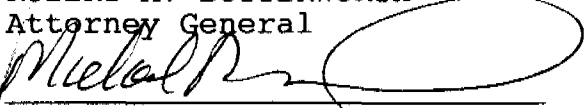


CONCLUSION

Based on the foregoing, Respondent requests this Court to decline to exercise its discretion and deny jurisdiction.

Respectfully submitted,

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\_\_\_\_\_  
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing RESPONDENT'S BRIEF ON JURISDICTION was furnished by mail to S.C. VAN VOORHEES, Attorney for Petitioner, 112 Orange Avenue, Suite A, Daytona Beach, Florida 32114 on this 27 day of April, 1994.

  
\_\_\_\_\_  
MICHAEL J. NEIMAND  
Assistant Attorney General

mls/

IN THE SUPREME COURT OF FLORIDA  
CASE NO.

**SCOTT PAUL BOUTERS,**

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vs.

**THE STATE OF FLORIDA,**

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---

APPENDIX TO RESPONDENT'S BRIEF ON JURISDICTION

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93-50495-C

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA

FIFTH DISTRICT

JANUARY TERM 1994

SCOTT BOUTERS,

Appellant,

v.

CASE NO.: 93-504

STATE OF FLORIDA,

Appellee.

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

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.

RECEIVED  
MAR 23 1994

DOCKETED  
MAR 25 1994  
H. R.  
ATTORNEY GENERAL  
MIAMI OFFICE

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

*[Handwritten signature]*

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.