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**FILED**

SID J. WHITE

MAY 31 1994

IN THE SUPREME COURT OF FLORIDA

CASE NO. 83,765

CLERK, SUPREME COURT

By \_\_\_\_\_

Chief Deputy Clerk

**PETER RICHARD KOSHEL,**

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

ROBERT A. BUTTERWORTH  
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## INTRODUCTION

The Petitioner, PETER RICHARD KOSHEL, 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.

The foregoing position is buttressed by the Third District's opinion in Pallas v. State, 19 Fla. L. Weekly D988 (Fla. 3d DCA May 3, 1994) whereat, in a detailed opinion, the Court held that the Stalking Statute is constitutional. Said opinions' analysis clearly establishes that the present attack on the Statute's constitutionality is spurious. As such, by not accepting jurisdiction herein, this Court will implicitly signal that the Fifth and Third District Courts' of Appeal are correct and the Statute is constitutional.



CONCLUSION

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

Respectfully submitted,

ROBERT A. BUTTERWORTH  
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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 NANCY RYAN, Attorney for Petitioner, 112 Orange Avenue, Suite A, Daytona Beach, Florida 32114 on this 26 day of May, 1994.



MICHAEL J. NEIMAND  
Assistant Attorney General

mls/

IN THE SUPREME COURT OF FLORIDA  
CASE NO.

PETER RICHARD KOSHEL,

Petitioner,

vs.

THE STATE OF FLORIDA,

Respondent.

---

APPENDIX TO RESPONDENT'S BRIEF ON JURISDICTION

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93-137884-E

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

JANUARY TERM 1994

STATE OF FLORIDA,

Appellant,

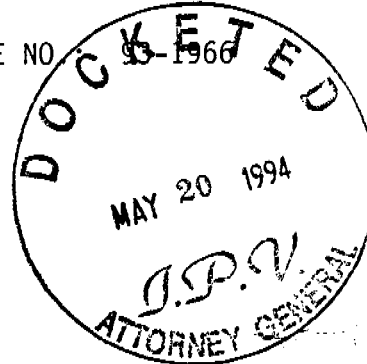
v.

PETER RICHARD KOSHEL,

Appellee.

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

CASE NO.



Opinion filed May 20, 1994

Appeal from the Circuit Court  
for Lake County,  
Jerry T. Lockett, Judge.

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

James B. Gibson, Public Defender, and Nancy  
Ryan, Assistant Public Defender, Daytona Beach,  
for Appellee.

PER CURIAM.

REVERSED. See Bouters v. State, 19 Fla. L. Weekly D678 (Fla. 5th DCA  
March 25, 1994).

COBB, SHARP, W. and THOMPSON, JJ., concur.

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.

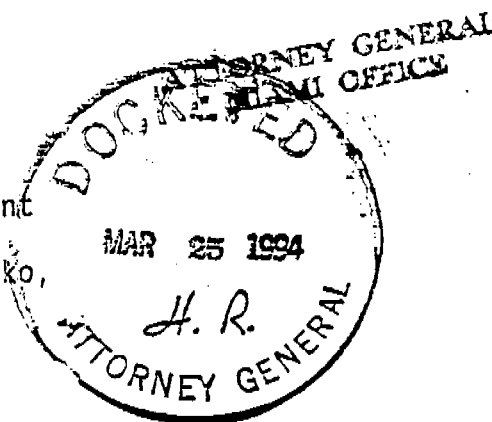
Opinion filed March 25, 1994

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



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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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.