IN THE SUPREME COURT IN THE STATE OF FLORIDA

SCOTT PAUL BOUTERS

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

DCA CASE NO. 93-504

Supreme Court Case No. 83,558

PETITIONER'S INITIAL BRIEF ON THE MERITS

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

S.C. VAN VOORHEES
ASSISTANT PUBLIC DEFENDER
FLORIDA BAR NO. 109503
112 Orange Ave., Ste. A
DAYTONA BEACH, FL 32114
(904) 252-3367

ATTORNEY FOR PETITIONER

TABLE OF CONTENTS

TABLE OF CITATIONS

OTHER AUTHORITIES CITED:

IN THE SUPREME COURT OF THE STATE OF FLORIDA

SCOTT PAUL BOUTERS Petitioner, vs. STATE OF FLORIDA, Respondent.	DCA CASE NO. 93-504 Supreme Court Case No. 83,558

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[1], 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)

[1] The defendant in the trial proceedings, now the appellant, will be referred to as the defendant in this brief. The state, now the appellee, will be referred to as the state. The symbol (R) is used to denote the documents filed with the clerks of court. The symbol (TR) is used to denote the transcripts of oral proceedings before the court. Section 784.048, Florida Statutes is referred to as the Florida Stalking Law, or the statute.

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. An order accepting jurisdiction and setting oral argument was entered on June 21, 1994. This proceeding follows.

SUMMARY OF ARGUMENT

The language of Section 784.048, Florida Statutes, is vague and overbroad, and does not give people of ordinary intelligence fair notice of what constitutes forbidden conduct under its terms. Because of its vagueness, the law is subject to arbitrary and discriminatory enforcement.

For these reasons, the statute is void as unconstitutional and the defendant's conviction under it should be reversed.

ISSUE

THE FLORIDA STALKING LAW IS UNCONSTITUTIONALLY VAGUE AND OVERBROAD

It is a fundamental requirement of due process that a criminal statute must clearly delineate the conduct it proscribes. Grayned v. City of Rockford, 408 U.S. 104 (1974) The proscribed conduct must be defined with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner which does not encourage arbitrary and discriminatory law enforcement. Kolander v. Lawson, 461 U.S. 352 (1983)

The U.S. Supreme Court has held that a statute is unconstitutionally vague if it is so drafted that "men of common intelligence must necessarily guess at its meaning and differ as to its application." Connally v. General Construction Company, 269 U.S. 385, 46 S.Ct. 126, 70 L.Ed. 322 (1926)

The Florida Stalking Law under which the defendant was charged and convicted does not meet this standard, because it suffers from at least two serious drafting problems which render it vague to the extent that even legal scholars find its exact significance difficult to divine, leaving its meaning virtually inscrutable to ordinary people such as police officers and college students who are in the active parts of the population and need to understand it.

This obscurity of meaning is not something which is apparent only to Florida advocates engaging in teleological reasoning in

behalf of their clients. Lawyers from other jurisdictions with unclouded motives have noticed and commented on the vagueness of the draftsmanship. The following passage from a learned treatise published in the Vanderbilt Law Review supports this statement:

> "The proliferation of stalking statutes reflects a new awareness that obsessive harassment is serious behavior warranting a serious remedy. Stalking laws are an important addition to the legal arsenal, precisely because they account for the nature of obsessive behavior and punish it with adequate penalties. Yet current stalking laws are not comprehensive. Some, like the California and Connecticut statutes, are too narrow to address fully all dangerous stalking behavior. Others, like the Florida statute, are drafted imprecisely and are susceptible to vagueness challenges. With stalking behavior on the rise, the need for states to enact comprehensive and carefully-drafted stalking laws that will pass constitutional muster is paramount."
>
> Guy, The Nature and Constitutionality of Stalking Laws, 46 VNLR 991 (1993)

The primary thrust of the argument in this brief is that the legislature's use of two nebulous phrases, which it left undefined, is alone enough to render the stalking law unconstitutionally void for vagueness and overbreadth. These phrases are: "no legitimate purpose" and "substantial emotional distress".

1. "No legitimate purpose."

Referring to the "Harass" definition incorporated into the Florida Stalking Law at subparagraph (1)(a), it becomes more clear why the author of the Vanderbilt Law Review article thought our stalking law was vague. The term is defined by the statute in the following way: "Harasses" means to engage in a course of conduct directed at a specific person that causes substantial emotional distress in such person and serves no legitimate

purpose. Section 784.048(1), Florida Statutes (1992 supp.) This definition is absolutely central to the interpretation and enforcement of the law because, though the law is entitled a stalking law, what it really focusses on is harassment.

Since the law is being accused of vagueness, it is important to determine what that term means. The U.S. Supreme Court has held that a statute is unconstitutionally vague if it is so drafted that "men of common intelligence must necessarily guess at its meaning and differ as to its application." Connally v. General Construction Company, 269 U.S. 385, 46 S.Ct. 126, 70 L.Ed. 322 (1926) That law was made in 1926. In 1985, the Florida Supreme Court restated existing law and defined a workable test for statutory vagueness for use in Florida. The case was State v. Bussey, 463 So.2d 1141, 1144 (Fla.1985):

> A statute which does not give people of ordinary intelligence fair notice of what constitutes forbidden conduct is vague. Papachristou v. City of Jacksonville, 405 U.S. 156, 92 S.Ct. 839, 31 L.Ed.2d 110 (1972); State v. Winters, 346 So.2d 991 (Fla.1977); Franklin v. State, 257 So.2d 21 (Fla.1971). The language of a statute must 'provide a definite warning of what conduct' is required or prohibited, 'measured by common understanding and practice.'

In 1991 the Florida Supreme Court added to and clarified this iteration by specifying in detail upon what reasoning its ruling on statutory vagueness was based. The case was Perkins v. State, 576 So. 2d 1310, 1312 (Fla. 1991):

> One of the most fundamental principles of Florida law is that penal statutes must be strictly construed according to their letter. E.g., State v. Jackson, 526 So.2d 58 (Fla.1988); State ex rel. Cherry v. Davidson, 103 Fla. 954, 139 So. 177 (1931); Ex parte Bailey, 39 Fla. 734, 23 So. 552 (1897). This principle ultimately rests on the due process requirement that criminal statutes must say with some precision exactly what is prohibited.

E.g., Brown v. State, 358 So.2d 16 (Fla.1978); Franklin v. State, 257 So.2d 21 (Fla.1971); State v. Moo Young, 566 So.2d 1380 (Fla. 1st DCA 1990). Words and meanings beyond the literal language may not be entertained nor may vagueness become a reason for broadening a penal statute.

[2] Indeed, our system of jurisprudence is founded on a belief that everyone must be given sufficient notice of those matters that may result in a deprivation of life, liberty, or property. Scull v. State, 569 So.2d 1251 (Fla.1990) (on petition for clarification); Franklin, 257 So.2d at 23. For this reason,

> [a] penal statute must be written in language sufficiently definite, when measured by common understanding and practice, to apprise ordinary persons of common intelligence of what conduct will render them liable to be prosecuted for its violation.

Gluesenkamp v. State, 391 So.2d 192, 198 (Fla.1980), cert. denied, 454 U.S. 818, 102 S.Ct. 98, 70 L.Ed.2d 88 (1981) (citations omitted). Elsewhere, we have said that

> [s]tatutes criminal in character must be strictly construed. In its application to penal and criminal statutes, the due process requirement of definiteness is of especial importance.

State ex rel. Lee v. Buchanan, 191 So.2d 33, 36 (Fla.1966) (citations omitted); accord State v. Valentin, 105 N.J. 14, 519 A.2d 322 (1987). Thus, to the extent that definiteness is lacking, a statute must be construed in the manner most favorable to the accused. Palmer v. State, 438 So.2d 1, 3 (Fla.1983); Ferguson v. State, 377 So.2d 709 (Fla.1979).

The rule of strict construction also rests on the doctrine that the power to create crimes and punishments in derogation of the common law inheres solely in the democratic processes of the legislative branch. (FN4) Borges v. State, 415 So.2d 1265, 1267 (Fla.1982); accord United States v. L. Cohen Grocery Co., 255 U.S. 81, 87-93, 41 S.Ct. 298, 299-301, 65 L.Ed. 516 (1921) (applying same principle to Congressional authority). As we have stated,

> The Florida Constitution requires a certain precision defined by the legislature, not legislation articulated by the judiciary. See Article II, Section 3, Florida Constitution.

Brown, 358 So.2d at 20; accord Palmer, 438 So.2d at 3. This principle can be honored only if criminal statutes are

applied in their strict sense, not if the courts use some minor vagueness to extend the statutes' breadth beyond the strict language approved by the legislature. To do otherwise would violate the separation of powers. Art. II, Sec. 3, Fla. Const.

Explicitly recognizing the principles described above, the legislature has codified the rule of strict construction within the Florida Criminal Code:

> The provisions of this code and offenses defined by other statutes shall be strictly construed; when the language is susceptible of differing constructions, it shall be construed most favorably to the accused.
>
> Sec. 775.021(1), Fla.Stat. (1987).

From the above, it seems clear that the use of vague and nebulous terms in penal statutes is not likely to be gladly suffered by the Florida Supreme Court.

Next, it is to be determined if the phrases complained of this brief are really vague.

The Florida Stalking Law punishes harassment. It defines harassment as conduct distressing to another which has no legitimate purpose. How an officer interprets the word legitimate, therefore, is absolutely determinative of whether an accused in a non-following case such as the one at bar,[2] will be chargeable with a crime under the Florida Stalking Law.

With harassment the issue, a police officer who is dispatched to the scene of what may be a stalking violation must first make a determination of whether the conduct before him is

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[2] The allegations of the instant case were that the defendant had repeatedly called the ex-girlfriend on the telephone, and paid an unwanted visit to her home after being placed under a domestic violence injunction. (TR 15, 16) Neither of these actions involves following, hence the "Following" aspect of the statute was not involved in this case.

serving a "legitimate" purpose. If the officer arrives at the scene and finds bill-collecting, mortgage-foreclosure, investigative reporting or abortion-picketing in progress, he is likely to decide that the malicious harassment taking place is serving a legitimate purpose, and that no crime is being committed no matter how much malice may be in the air or how much anguish the behavior may be causing. In such circumstances he will no doubt recognize that his duty under this law is to leave the parties as they are and go back on patrol.

Thus, where following is not a factor, as in the instant case, the question of whether further investigation will even be undertaken depends on the subjective determination of the responding officer as to whether or not the course of conduct being questioned is serving a legitimate purpose. The problem here is that the statute does not define "legitimate". The officer is on his own in this regard. He must make the watershed decision as to whether the behavior before him is legitimate without guidance of any kind from the statute.

It might be argued that the term legitimate has been in the english language for aeons and everyone should by now have a good grasp of its meaning. The problem with this is that the issue of legitimacy or illegitimacy is the absolutely pivotal point upon which all ethical systems are based. Legitimate and illegitimate are simply two other words for right and wrong, or good and evil. Sending an officer out without exact and very specific guidelines to arbitrate legitimate behavior in the abstract is like sending

him out, as in Camelot, to fight for right.

People of different backgrounds commonly differ as to what they consider legitimate, right and good. Some might consider harassment pursuant to investigative reporting legitimate, while others might not. True, such reporting is frequently malicious, but many can accept this as justified if the perceived turpitude of the subject being investigated is great enough.

An examination of the statute reveals that, having turned loose the issues of legitimacy and illegitimacy, it contains nothing to guide or help the officer in resolving what amounts to the age-old struggle between good and evil. No specific definitions have been provided, no guidelines have been set forth, and no ethical principles have been enunciated.

Hence the defendant argues that, without specific guidelines, various enforcers from different cultural backgrounds will differ as to the application of this statute. In Florida we have many cultural backgrounds. A court could probably take judicial notice of the fact that the state of Florida is a melting pot of divers cultures.[3]

This possibility of divers application because of divers cultural backgrounds is good evidence that the law is un-constitutional, because the U.S. Supreme Court has held that a

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[3]Perhaps such a law would work well in an island society such as Japan in which a single homogenous culture thousands of years old still exists. In Japan there may actually be some surviving consensus as to fundamental cultural values which could support sending the police out without guidelines to support what they thought was legitimate and suppress that which they thought was illegitimate.

statute is unconstitutionally vague if it is so drafted that "men of common intelligence must necessarily guess at its meaning and differ as to its application." Connally v. General Construction Company, 269 U.S. 385, 46 S.Ct. 126, 70 L.Ed. 322 (1926)

With these considerations in mind, it seems clear that the use of the term legitimate without specific definition or guidance as to its meaning "impermissibly delegates basic policy matters to policemen, judges and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application." Grayned v. City of Rockford, 408 U.S. 104, 108-9, 92 S.Ct. 2294, 2298-99, 33 L. Ed. 2d 222 (1972), quoted in Wyche v. State, 619 So. 2d 231, 236-7 (Fla. 1993).

2. "Substantial emotional distress."

The definition of "harassment" contains a second element of troublesome vagueness: "substantial emotional distress"

The use of this wording adds a second tier of imponderables to the charging decision that an officer at the scene of an alleged stalking must make. If the officer has confronted the question of whether, in his estimation, the activity being engaged in is serving a legitimate purpose, and has decided that it is not, he must enquire further. Now, by the terms of the statute, he must determine if the course of conduct is causing substantial emotional distress in a specific person. The statute, however, provides no guidance as to how the process of determining stress level is to proceed.

Although polygraph and psychological stress evaluation machines exist, they are not yet considered reliable enough for general admissibility in judicial proceedings. Cohen V. State, 581 So.2d 926 (3rd DCA 1991); Davis v. State, 520 So.2d 572 (Fla.1988); Delap v. State, 440 So.2d 1242 (Fla.1983) Certainly, this equipment is not available at the street level to help a police officer in making a good on-the-spot determination of the level of emotional distress in someone he is facing on a front porch. The use of this equipment is not even addressed in the statute. Hence the officer must determine the level of emotional distress in a stranger, and he must do it based on nothing more than his own subjective appreciation of the symptoms being exhibited by the person before him. His difficulty in this regard will be compounded by the fact that no guidance is given by the statute as to the meaning of the term "substantial", which, depending on the criteria used, could mean anything from noticeable annoyance to a state of stunned, catatonic horror. It can be accepted that even trained psychologists are frequently guessing when they assess a person's level of emotional distress without the use of written tests or special equipment. It is safe to assume that a police officer will be in no better position on the street than a psychologist would be in his office. Hence it is also safe to assume that the police officer will be guessing at the level of emotional distress a large proportion of the time.

Given this built-in component of uncertainty, generated in

part by the absence of guidance in the statute, different police officers, having different upbringings, and different educations, equipped with no special equipment, and being without specific guidance, will necessarily differ as to whether the level of stress required for activation of the statute has been reached.

This is more good evidence that the statute is unconstitutional under the reasoning of The Supreme Court in Connally, id. The police, being usually "men of common intelligence", must necessarily "guess at the meaning" of the phrase "substantial emotional distress", and "differ as to its application". The statute has thus "left to police the unguided task of differentiating between constitutionally protected street encounters and acts reflecting the state of mind needed to make an arrest.", a situation the Florida Supreme Court viewed with disfavor in Wyche v. State, 619 So.2d 231 (Fla. 1993)

3. The law keys prosecution to emotional response.

There is another, more troublesome, aspect to the decision of the legislature in tying criminality to the emotional state of the accuser in the stalking statute. Traditionally, laws have been tied to the stimulus side of the interpersonal equation. If a man did something specific, a corresponding emotional response was assumed to result in the victim. It was the stimulus, which the defendant controlled, which was used as the determinant of criminality. The law, in short, regulated behavior and assumed emotional response.

This law reverses that. Now the emotional response is what controls criminality. This is, of course, beyond the control of the accused.

The law is now monitoring emotional response and assuming that if the response was bad, the stimulus behavior which elicited it must be bad too. On close examination, it will be apparent that this is a fallacy. Where emotions are concerned, the pathology of the person having the emotion can be a bigger determinant of the emotion than the objective stimulus. There are people who have free-floating anxiety which has no discernible stimulus whatever.

The emotional response to any action may vary from mild to extreme and it is under the sole control of the victim. If the person who calls the police is a hysteric, the emotional distress may be extreme, but the stimulus which produced it may have been some minor transgression hardly noticeable to a normally balanced personality.

How can a man justly be held criminally responsible for that which is beyond his control?

What is happening here is that the statute departs from prohibition of objectively harmful behavior and expands the area of onus to include offensiveness. It has broken into the area of criminalizing manners. Worse, it does so without specifying in any rigorous way what specific behavior is to be held legally annoying. Speech is a form of behavior which might be particularly vulnerable to hypersensitivity of the type being

considered. The "chilling effect" on first-amendment freedoms has been cited as a compelling reason why vague and overbroad laws should not be upheld. Wyche, Id.; City of Daytona Beach v. Del Percio, 476 So.2d 197, 202 (Fla.1985). After arrest and prosecution, the rude or annoying person might be exonerated, but she would be unlikely to revisit that topic again in conversation with the accuser. The fact that a person is later vindicated by a court is of little consequence since it is the arrest itself that chills First-Amendment rights. Coleman v. City of Richmond 374 S.E. 2d 239 (Va. Ct. App. 1988)

Clearly there is a conceptual problem with this statute which must be set right before the courts consent to enforce it.

4. The statute is overbroad.

With the statute thus anchored in the subjective response of the accuser and individual beliefs of the beholder, constitutionally-protected forms of activity stand to be curtailed. An arrest might ensue in almost any emotionally-charged activity, regardless of its constitutional sanctity if, (a) the complainant and the police officer could agree that it was serving no legitimate purpose and, (b) the person who called the police found it repugnant and exhibited behavior which the officer was willing to accept as evidence of substantial emotional distress. Some forms of constitutionally protected behavior, such as political protest and investigative reporting, are necessarily and properly conducted with malice and rancor.

These activities well fulfill the "willfully and maliciously" criteria of the statute, while still being constitutionally protected.

The statute, does, by its terms, exclude constitutionally protected activities from criminality under its terms. This is nugatory language, since it is beyond the legal power of the Florida legislature to take away constitutionally protected freedoms in any event. The fact that the legislature even felt compelled to include such a curious paragraph in its law seems to indicate a consciousness that constitutional problems may ensue.

With the statute drafted as it is, this possibility is real. Depending on the subjective beliefs of the legal authority at the scene, a snooping investigative reporter might well be taken in. A determined abortion protestor, no longer part of an organized protest, since all her cohorts had given up and gone home, might go to jail. Yet constitutional scholars might later find that either or both of these incarcerated zealots were exercising constitutionally protected first-amendment freedoms.

It is not enough to put a man through the police academy and then send him out to unravel problems which might confound a constitutional scholar without even defining the terms in the statute he is to enforce. Specific guidance contained in the law itself is needed. When a policeman faces a trembling protestor on a first-amendment battleground, it will be of little use to him that the legislature has included the blithe caveat: "Constitutionally protected activity is not included".

This dearth of guidance not only allows, but practically assures, arbitrary and discriminatory law enforcement in contravention of Kolander v. Lawson, Id.. Regardless of his good will to do only that which is legitimate and constitutional, an officer who has only his subjective appreciation of terms like "legitimate", "substantial" and "Constitutionally protected" as his sheet anchors when making decisions is underequipped. To do his job he must make decisions as to who shall be charged with a crime and he will do his duty and bravely make these decisions, but without specific guidance he can hardly be expected to avoid arbitrary and discriminatory enforcement of the law.

A subjective standard has been created by the undefined and subjective wording of the statute itself. An unenforceably vague law has resulted. It becomes impossible to predict from one officer to the next and one victim to the next what conduct will be "legitimate", what distress will be "substantial", and what activities will be "constitutionally protected".

Hence, by failing to provide clear guidance as to what is meant by the terms harassment, substantial, and constitutionally protected in the stalking statute, the legislature "delegates basic policy matters to policemen, judges and juries for resolution on an ad hoc and subjective basis," Grayned, supra, and should not be enforced for that reason.

5. Courts must not rewrite ambiguous laws.

The Florida Supreme Court made clear in Wyche, Id. that the

clarity necessary in a penal statute must be written into it by the legislature. One reason articulated was that for the courts to supply meaning not included by the legislature would constitute judicial legislation, and violate the separation of powers crafted into our system by Article II, Section 3, of the Florida Constitution. A more concise iteration of this principle was set out by the Florida Supreme Court in Brown v. State, 629 So. 2d 841, (Fla. 1994):

> ...statutes nonetheless must include sufficient guidelines to put those who will be affected on notice as to what will render them liable to criminal sanctions. When the legislature fails to provide guidelines, this Court cannot step in and guess about legislative intent. Such a practice would constitute judicial legislating, a practice neither our Constitution nor this Court allows. Art. II, Section 3, Fla. Const.; Brown v. State, 358 So. sd 16 (Fla. 1978) The precision required of statutes must come from the Legislature.

Hence, if the statute is seen by this Court to be unconstitutionally vague or overbroad, the appropriate remedy is not judicial gloss to stretch or squeeze the product of the legislature into shape. The statute should be found void as unconstitutional, and the legislature thus advised that more precise legislation is called for on this point.

CONCLUSION

The Florida Stalking Law is facially unconstitutional because it so vague and overbroad as to risk that those governed by it will be deprived of due process of law and other constitutional guarantees. For this reason it is void as being contrary to the meaning and intent of highest law of the land.

The Florida Stalking Law should be held void as unconstitutional, and the defendant's conviction under it should be reversed.

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

S.C. VAN VOORHEES
ASSISTANT PUBLIC DEFENDER
Fla. Bar #109503
112 Orange Avenue
Daytona Beach, Fl. 32014
(904) 252-3367

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, 444 Seabreeze Avenue, Fifth Floor, Daytona Beach, Fla. 32118, in his basket at the Fifth District Court of Appeal; and mailed to Scott P. Bouters, DC# 370511, 3140 Ginger Circle, Orlando, Florida 32826, on this 18th day of July, 1994.

S.C. Van Voorhees
ASSISTANT PUBLIC DEFENDER

IN THE SUPREME COURT OF FLORIDA

SCOTT PAUL BOUTERS, Petitioner, vs. STATE OF FLORIDA, Respondent.	S.Ct. CASE NO. 83,558

A P P E N D I X

Florida Cases, 521-633 So.2d
634 So.2d 246, Bouters v. State, (Fla.App. 5 Dist. 1994)

---------- Page 634 So.2d 246 follows ----------

19 Fla. L. Weekly D678

Scott BOUTERS, Appellant,
v.
STATE of Florida, Appellee.

No. 93-504.
District Court of Appeal of Florida,
Fifth District.

March 25, 1994.

Defendant was charged with offense of aggravated stalking. Defendant moved to dismiss on ground statute was unconstitutional. The Circuit Court, Orange County, Richard F. Conrad, J., denied motion and appeal was taken. The District Court of Appeal held that: (1) statute was not facially vague or overbroad, and (2) assuming that word "harasses" as used in statute is vague, statute in its entirety rendered that particular phrase superfluous and hence harmless.

Affirmed.

EXTORTION AND THREATS k25.1
165 ----
165II Threats
165k25 Nature and Elements of Offenses
165k25.1 In general.
Fla.App. 5 Dist. 1994.

Antistalking statute was constitutional, even though it contained definition of term "harasses" which was allegedly vague and served no legitimate purpose; statute, read in its entirety, rendered phrase in question superfluous, and hence harmless. West's F.S.A. Sec. 784.048(1)(a), (3).

James B. Gibson, Public Defender, and S.C. Van Voorhees, Asst. Public Defender, Daytona Beach, for appellant.

Robert A. Butterworth, Atty. Gen., Tallahassee, and Michael J. Neimand, Asst. Atty. Gen., Parker D. Thomson, and Carol A. Licko, Sp. Asst. Attys. Gen., 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

---------- Page 634 So.2d 247. follows ----------

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 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.

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

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.