

IN THE SUPREME COURT OF FLORIDA

CASE NO. 83,870

JOHN D. POLSON,

Petitioner,

-vs-

THE STATE OF FLORIDA,

Respondent.

**FILED**

SID J. WHITE

JUL 18 1994

CLERK, SUPREME COURT

By

Chief Deputy Clerk

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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, JOHN D. POLSON, 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 herein, the State submits that this Court should not exercise it at this time since the court has accepted jurisdiction in Bouters v. State, Case No. 83,558.

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. At this time this Court has already accepted Bouters v. State, Case No. 83,558 on the same issue. Therefore, in the interest of judicial economy this Court should defer ruling on jurisdiction until it decides the Bouters case.



CONCLUSION

Based on the foregoing, Respondent requests this Court to decline to exercise its discretion at this time.

Respectfully submitted,

ROBERT A. BUTTERWORTH  
Attorney General



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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 SEAN K. AHMED, Attorney for Petitioner, 112 Orange Avenue, Suite A, Daytona Beach, Florida 32114 on this 14 day of July, 1994.



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MICHAEL J. NEIMAND  
Assistant Attorney General

mls/

IN THE SUPREME COURT OF FLORIDA

CASE NO. 83,870

JOHN D. POLSON,

Petitioner,

vs.

THE STATE OF FLORIDA,

Respondent.

---

APPENDIX TO RESPONDENT'S BRIEF ON JURISDICTION

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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.

JOHN D. POLSON,  
Appellant,

v.

Case No. 93-1891

STATE OF FLORIDA,  
Appellee.

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MAY 27 1994

PUBLIC DEFENDER'S OFFICE  
7th CIR. APP. DIV.

Opinion filed May 27, 1994

Appeal from the Circuit Court  
for Seminole County,  
Alan A. Dickey, Judge.

James B. Gibson, Public Defender and  
Sean K. Ahmed, Assistant Public  
Defender, Daytona Beach for Appellant.

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

PER CURIAM.

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

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

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.

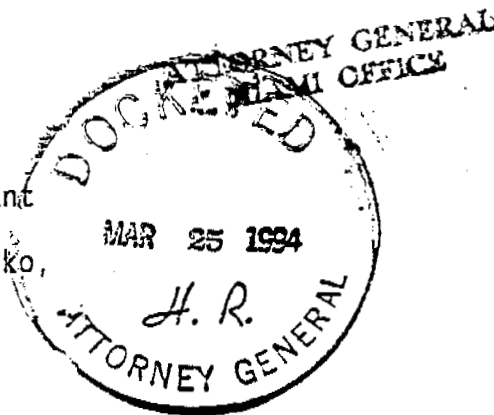
James B. Gibson, Public Defender,  
and S. C. Van Voorhees, Assistant Public  
Defender, Daytona Beach, for Appellant.

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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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.