IN THE SUPREME COURT OF FLORIDA

CASE NO. 83,982

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CLERK, SUPREME COURT

Chief Deputy Clerk

By_

ROGER ANTHONY DANIELS, et. al.,

Petitioners,

-vs-

THE STATE OF FLORIDA,

Respondent.

ON PETITION FOR DISCRETIONARY REVIEW

RESPONDENT'S BRIEF ON JURISDICTION

ROBERT A. BUTTERWORTH Attorney General

MICHAEL J. NEIMAND Assistant Attorney General Florida Bar No. 0239437 Office of the Attorney General Department of Legal Affairs 401 N.W. 2nd Avenue, Suite N921 Post Office Box 013241 Miami, Florida 33101 (305) 377-5441

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TABLE OF CITATIONS

Bouters v. St		
Case No.	83,558	4-5

OTHER AUTHORITIES:

Rule 9.0	030(2)(A)(i)	Fla. R.	App.	P	• 5
Section	748.048(3),	Florida	Statu	1tes	3,5

INTRODUCTION

The Petitioners, ROGER ANTHONY DANIELS, et. al., were the Appellees below. The Respondent, the STATE OF FLORIDA, was the Appellant 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 <u>Bouters v. State</u>, 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 <u>Bouters v. State</u>, 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.

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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 MICHAEL J. NEIMAND Assistant Attorney General Florida Bar No. 0239437

Office of the Attorney General Department of Legal Affairs 401 N.W. 2nd Avenue, Suite N921 Post Office Box 013241 Miami, Florida 33101 (305) 377-5441

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 $\underline{14}$ day of July, 1994.

MICHAEL J. NEIMAND

Assistant Attorney General

mls/

IN THE SUPREME COURT OF FLORIDA

CASE NO. 83,982

ROGER ANTHONY DANIELS, et. al.,

Petitioner,

vs.

THE STATE OF FLORIDA,

Respondent.

APPENDIX TO RESPONDENT'S BRIEF ON JURISDICTION

MICHAEL J. NEIMAND Assistant Attorney General Florida Bar No. 0239437 Office of the Attorney General Department of Legal Affairs 401 N.W. 2nd Avenue, N-921 Post Office Box 013241 Miami, Florida 33101 305-377-5441

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.

STATE OF FLORIDA,

Appellant,

۷.

ROGER ANTHONY DANIELS, MARK GIBSON, JOHN ROGERS,

Appellees.

Opinion filed May 27, 1994 \vee

Appeal from the County Court for Seminole County, Frederick M. Hitt, County Judge.

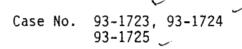
Robert A. Butterworth, Attorney General, Tallahassee and Michael J. Neimand, Assistant Attorney General, Parker D. Thomson and Carol A. Licko, Special Assistant Attorneys General, Miami, for Appellant.

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

PER CURIAM.

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

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



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Appendix "A"

IN THE DISTRICT COURT OF APPEAL OF THE STATE C. FLORIDA

FIFTH DISTRICT

JANUARY TERM 1994

TT BOUTERS,

۷.

Appellant,

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

CASE NO.: 93-504

STATE OF FLORIDA,

Appellee.

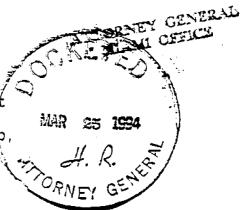
Opinion filed March 25, 1994

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 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 <u>State v. Pallas</u>, 1 Fla. L. Weekly Supp. 442 (Fla. 11th Cir. June 9, 1993). In respect to the argument that the definition of the "d "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 <u>State v. Bossie</u>, 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.

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AFFIRMED.

DAUKSCH, COBB and GRIFFIN, JJ., concur.