

IN THE SUPREME COURT OF FLORIDA
CASE NO. 83,982

FILED
SID J. WHITE
JUN 18 1994

ROGER ANTHONY DANIELS, et. al.,
Petitioners,

CLERK SUPREME COURT
By _____
Chief Deputy Clerk

-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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THIS COURT SHOULD NOT ACCEPT
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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 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



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 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

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

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

STATE OF FLORIDA,

Appellant,

v.

Case No. 93-1723, 93-1724
93-1725

ROGER ANTHONY DANIELS,
MARK GIBSON,
JOHN ROGERS,

Appellees.

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CLERK OF DISTRICT COURT
FIFTH DISTRICT

Opinion filed May 27, 1994 ✓

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. 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.