

**FILED**

SID J. WHITE

JUL 29 1994

IN THE SUPREME COURT OF FLORIDA ✓

CASE NO. 84,028

CLERK, SUPREME COURT

By \_\_\_\_\_

Chief Deputy Clerk

COLIN FOLSOM,

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

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**THIS COURT SHOULD NOT ACCEPT  
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## INTRODUCTION

The Petitioner, COLIN FOLSOM, was the Appellee 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 Third 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,

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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 MANUEL ALVAREZ, Attorney for Petitioner, 1320 N.W. 14th Street, Miami, Florida 33125 on this 26 day of July, 1994.

  
MICHAEL J. NEIMAND  
Assistant Attorney General

mls/

IN THE SUPREME COURT OF FLORIDA

CASE NO. 84,028

COLIN FOLSOM,

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---

APPENDIX TO RESPONDENT'S BRIEF ON JURISDICTION

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

IN THE DISTRICT COURT OF APPEAL  
OF FLORIDA  
THIRD DISTRICT  
JANUARY TERM, A.D. 1994

COLIN FOLSOM,

\*\*

Appellant,

\*\*

vs.

\*\*

CASE NO. 93-1196

THE STATE OF FLORIDA,

\*\*

Appellee.

\*\*

Opinion filed June 21, 1994.

An appeal from the Circuit Court for Monroe County, Ruth  
Becker, Acting Judge.

Bennett H. Brummer, Public Defender, and Manuel Alvarez,  
Assistant Public Defender, for appellant.

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

Before NESBITT, JORGENSON, and LEVY, JJ.

PER CURIAM.

Defendant seeks reversal of his conviction for violating  
Florida's anti-stalking statute, sections 784.048(3) and (4),  
Florida Statutes (1993). We affirm and remand for resentencing.

We find this Court's opinion in Pallas v. State, 19 Fla. L. Weekly D988 (Fla. 3d DCA May 3, 1994) and State v. Bossie, 1 Fla. L. Weekly Supp. 465 (Fla. Brevard County Ct. June 22, 1993) dispositive of the issues posed on appeal. See also Bouters v. State, 634 So. 2d 246 (Fla. 5th DCA 1994).

We do find, however, that aggravated stalking is classified as a third degree felony, and as such the appellant's period of incarceration plus probation cannot exceed the maximum of five years. §775.082(3)(d), Fla. Stat. (1993). Thus, we remand for imposition of a sentence no greater than the statutory maximum.

Affirmed and remanded for resentencing.