

# Supreme Court of Florida

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No. 84,161  
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DAVID LEWIS GILBERT,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

**ORIGINAL**

[April 27, 1995]

SHAW, J.

We have for review Gilbert v. State, 639 So. 2d 191 (Fla. 1st DCA 1994), wherein the district court certified the following question:

Is section 784.048, Florida Statutes (Supp. 1992), facially unconstitutional as vague and overbroad?

We have jurisdiction. Art V, § 3(b)(4), Fla. Const.

We have found this statute constitutional in Bouters v. State, No. 83,558 (Fla. Apr. 27, 1995). Accordingly, we answer the question in the negative and approve the district court decision on this issue.

It is so ordered.

GRIMES, C.J., and OVERTON, HARDING, WELLS and ANSTEAD, JJ.,  
concur.

KOGAN, J., concurs specially with an opinion.

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

KOGAN, J., specially concurring.

The certified question is overbroad because the sole statute at issue here is subsection 784.048(3), Florida Statutes (Supp. 1992). For that reason, I would rephrase the question as follows:

Is subsection 784.048(3), Florida Statutes (Supp. 1992), facially unconstitutional as vague or overbroad?

I otherwise generally agree with the majority's conclusions, but subject to the reservations I expressed in Bouters v. State, No. 83,558 (Fla. Apr. 27, 1995) (Kogan, J., specially concurring), Varney v. State, No. 84,172 (Fla. Apr. 27, 1995) (Kogan, J., dissenting), and Koshel v. State, No. 83,765 (Fla. Apr. 27, 1995) (Kogan, J., specially concurring).

Application for Review of the Decision of the District Court of  
Appeal - Certified Great Public Importance

First District - Case No. 93-854

(Escambia County)

Nancy A. Daniels, Public Defender and David P. Gauldin, Assistant  
Public Defender, Second Judicial Circuit, Tallahassee, Florida,

for Petitioner

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

for Respondent