

IN THE SUPREME COURT OF FLORIDA

CASE NO. 84315

FILED

SID J WHITE

SEP 2 1994

CLERK, SUPREME COURT

BY ~~Clerk Deput. Clerk~~

LEROI BLOUNT,

Petitioner,

-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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INTRODUCTION

The Petitioner, **LEROIS BLOUNT**, 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 Fourth District held that Florida's Stalking Statute is constitutional. Although this Court has discretionary jurisdiction hereon, the State submits that this Court should not exercise it. By refusing jurisdiction, this Court will implicitly be affirming the Fourth District's holding herein.

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. The Fourth District found the statute to be facially constitutional without detailing its reasoning. The reason for such an opinion is that the stalking statute does not suffer any infirmity. Therefore, the State submits that this Court should decline jurisdiction and by so doing this Court will implicitly be affirming the Fourth District.

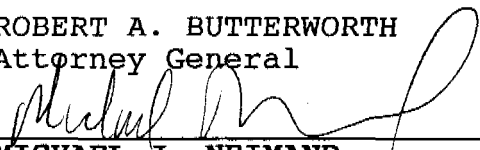
The foregoing position is buttressed by the Third District's opinion in Pallas v. State, 636 So. 2d 1358 (Fla. 3d DCA 1994) whereat, in a detailed opinion, the Court held that the Stalking Statute is constitutional. Said opinions' analysis clearly establishes that the present attack on the Statute's constitutionality is spurious. As such, by not accepting jurisdiction herein, this Court will implicitly signal that the Fourth and Third District Courts' of Appeal are correct and the Statute is constitutional.

CONCLUSION

Based on the foregoing, Respondent requests this Court to decline to exercise its discretion and deny jurisdiction.

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 ANTHONY CALVELLO, Attorney for Petitioner, Criminal Justice Building, 421 3rd Street, 6th floor, West Palm Beach, Florida 33401 on this 31 day of August, 1994.



MICHAEL J. NEIMAND
Assistant Attorney General

mls/

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CASE NO.

LEROIS BLOUNT,

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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
FOURTH DISTRICT

JULY TERM 1994

LEROIS BLOUNT,)
)
 Appellant,)
)
 v.)
)
 STATE OF FLORIDA,)
)
 - Appellee.)
)
 _____)

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

CASE NO. 93-0461.

L.T. CASE NO. 92-404-CFA.

Opinion filed August 24, 1994

Appeal from the Circuit Court
for Okeechobee County; Edward A.
Miller, Judge.

Richard L. Jorandby, Public
Defender, Peggy Natale and Anthony
Calvello, Assistant Public Defenders,
West Palm Beach, for appellant.

Robert A. Butterworth, Attorney
General, Tallahassee, Michael J.
Neimand, Assistant Attorney General,
Miami, Parker D. Thomson and Carol A.
Licko, Special Assistant Attorneys
General, Miami, and Joan Fowler,
Assistant Attorney General, West Palm
Beach, for appellee.

PER CURIAM.

AFFIRMED. See State v. Kahles, No. 93-0957 (Fla. 4th
DCA August 24, 1994); Pallas v. State, 636 So. 2d 1358 (Fla. 3d
DCA 1994); Bouters v. State, 634 So. 2d 246 (Fla. 5th DCA 1994),
review granted, No. 83,558 (Fla. June 21, 1994).

GUNTHER, WARNER and POLEN, JJ., concur.