

**FILED**

SID J. WHITE

FEB 24 1995

IN THE SUPREME COURT OF FLORIDA

CASE NO. 85-203

CLERK, SUPREME COURT

By

Chief Deputy Clerk

**PATRICE RATCLIFFE,**

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  
Fax No. (305) 377-5655

TABLE OF CONTENTS

INTRODUCTION..... 1

STATEMENT OF THE CASE AND FACTS..... 2

QUESTION PRESENTED..... 3

SUMMARY OF THE ARGUMENT..... 4

ARGUMENT..... 5

THIS COURT SHOULD NOT ACCEPT  
JURISDICTION HEREIN WHEN THE DISTRICT  
COURT OF APPEAL SPECIFICALLY UPHELD THE  
VALIDITY OF SECTION 748.048(4), FLORIDA  
STATUTES..... 5

CONCLUSION..... 6

CERTIFICATE OF SERVICE..... 6

TABLE OF CITATIONS

Pallas v. State,  
636 So. 2d 1358 (Fla. 3d DCA 1994)..... 5

OTHER AUTHORITIES:

Rule 9.030(2)(A)(i) Fla. R. App. P..... 5

Section 748.048, Florida Statutes..... 3,5

INTRODUCTION

The Petitioner, **PATRICE RATCLIFFE**, 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,  
FLORIDA STATUTES.

SUMMARY OF THE ARGUMENT

The Second 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 Second 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, 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 Second 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 Second 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 Second and Third District Courts' of Appeal are correct and the Statute is constitutional.

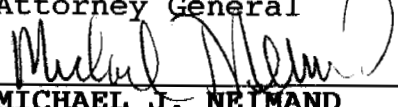


CONCLUSION

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

Respectfully submitted,

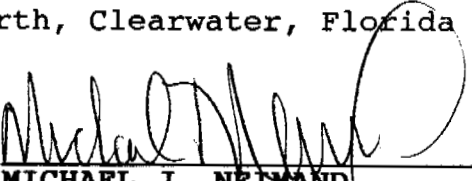
ROBERT A. BUTTERWORTH  
Attorney General

  
\_\_\_\_\_  
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  
Fax No. (305) 377-5655

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 ALLYN GIAMBALVO, Attorney for Petitioner, Pinellas County Courthouse, 5100 144th Avenue North, Clearwater, Florida 34620 on this 22nd day of February, 1995.

  
\_\_\_\_\_  
MICHAEL J. NEIMAND  
Assistant Attorney General

mls/

IN THE SUPREME COURT OF FLORIDA  
CASE NO.

**PATRICE RATCLIFFE,**  
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  
Fax No. (305) 377-5655

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

IN THE DISTRICT COURT OF APPEAL  
OF FLORIDA  
SECOND DISTRICT

PATRICE RATCLIFFE,  
Appellant,

v.

STATE OF FLORIDA,  
Appellee.

CASE NO. 93-04054

Opinion filed February 1, 1995.

Appeal from the Circuit Court  
for Pinellas County, Claire K.  
Luten, Judge.

James Marion Moorman, Public Defender,  
Bartow, and Allyn Giambalvo, Assistant  
Public Defender, Clearwater, for  
Appellant.

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

PER CURIAM.

Affirmed. See State v. Tremmel, 644 So. 2d 102 (Fla.  
2d DCA 1994).

PATTERSON, A.C.J., and BLUE and FULMER, JJ., Concur.