

IN THE SUPREME COURT OF FLORIDA

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CLERK, SUPREME COURT

By

Chief Deputy Clerk

RICHARD E. AUSTIN,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

CASE NO. 93,274

RESPONDENT'S ANSWER BRIEF ON THE MERITS

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CRIMINAL APPEALS
FLORIDA BAR NO. 325791

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State v. Gloster, 703 So. 2d 1174 (Fla. 1st DCA 1997),
rev. pending, No. 92,235 (Fla. May 19, 1998) . 3,4

PRELIMINARY STATEMENT

Respondent, the State of Florida, the Appellee in the District Court of Appeal (DCA) and the prosecuting authority in the trial court, will be referenced in this brief as Respondent, the prosecution, or the State. Petitioner, Richard E. Austin, the Appellant in the DCA and the defendant in the trial court, will be referenced in this brief as Petitioner or by proper name.

The record on appeal consists of two volumes. Pursuant to Rule 9.210(b), Fla. R. App. P. (1997), this brief will refer to a volume according to its respective designation within the Index to the Record on Appeal. A citation to a volume will be followed by any appropriate page number within the volume. "IB" will designate Petitioner's Initial Brief, followed by any appropriate page number.

All emphasis through bold lettering is supplied unless the contrary is indicated.

CERTIFICATE OF FONT AND TYPE SIZE

Counsel certifies that this brief was typed using Courier New 12.

STATEMENT OF THE CASE AND FACTS

The State agrees with Petitioner's statement of the case and facts as found on pages one and two of the Initial Brief.

SUMMARY OF ARGUMENT

ISSUE I. This issue is presently pending before this Court in State v. Gloster, 703 So. 2d 1174 (Fla. 1st DCA 1997), rev. pending, No. 92,235 (Fla. May 19, 1998). The State adopts and by reference incorporates its argument in Gloster on this point.

ARGUMENT

ISSUE I

WHETHER SECTION 322.34(1)(C), FLORIDA STATUTES,
VIOLATES THE SEPARATION OF POWERS DOCTRINE?
(Restated)

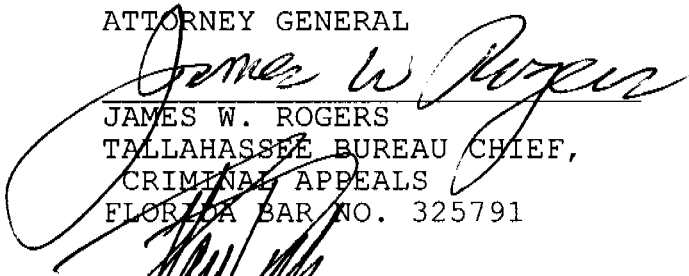
This issue is presently pending before this Court in State v. Gloster, 703 So. 2d 1174 (Fla. 1st DCA 1997), rev. pending, No. 92,235 (Fla. May 19, 1998). The State adopts and by reference incorporates its argument in Gloster on this point.

CONCLUSION

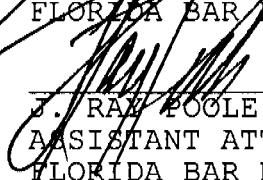
Based on the foregoing, the State respectfully submits that the decision of the District Court of Appeal should be approved, and that the order denying Petitioner's motion to dismiss entered in the trial court should be affirmed.

Respectfully submitted,

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL



JAMES W. ROGERS
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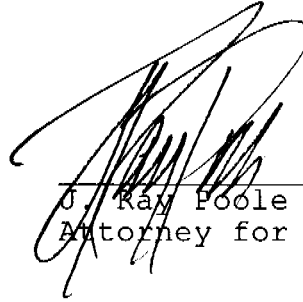
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing RESPONDENT'S ANSWER BRIEF ON THE MERITS has been furnished by U.S. Mail to Glen P. Gifford, Esq., Assistant Public Defender, Leon County Courthouse, Suite 401, 301 South Monroe Street, Tallahassee, Florida 32301, this 19th day of October, 1998.



J. Ray Poole
Attorney for the State of Florida

[A:\AUSTINBA.WPD --- 10/17/98,11:17 am]