

24-6324

IN THE UNITED STATES SUPREME COURT

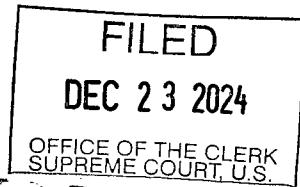
SAMUEL LEE SMITH, JR.

Case Number:

Appellant,

v.

R. EVERETT,  
Appellee,



ORIGINAL

**PETITION FOR WRIT OF CERTIORARI**

(From Fla. Third District Court of Appeal 3D24-0054)

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## **QUESTIONS PRESENTED**

Did the trial court violated the Petitioner's fundamental right to due process notice and opportunity to be heard, as guaranteed by the 5<sup>th</sup> and 14<sup>th</sup> Amendment when the trial court imposed a stay away order against the Petitioner without ever affording him notice and opportunity to be heard?

### **Questions Presented**

1. Did the trial court commit reversible error by not granting a temporary injunction because the trial court viewed the petition as petitions for domestic violence as a repeat/date/ sexual violence and no stalking as alleged in the petition?
2. Did the trial court commit reversible error dismissing the petition for an injunction to prevent Respondent from stalking when it denied Petitioner relief without affording him a hearing?
3. Did the trial court commit reversible error dismissing the petition for an injunction to prevent Respondent from stalking Petitioner because there was a prima facie case pled for stalking?

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The trial court violated the Petitioner's fundamental right to due process notice and opportunity to be heard, as guaranteed by the 5<sup>th</sup> and 14<sup>th</sup> Amendment when the trial court imposed a stay away order against the Petitioner without ever affording him notice and opportunity to be heard.

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## **PETITION FOR WRIT OF CERTIORARI**

### **1. DECISION BELOW**

Petitioner petitions to this Honorable Court to review the State of Florida District Court Appeals, Third District's decision affirming the lower court's dismissal of a petition for injunction based upon stalking.

### **2. Jurisdiction**

This petition seeks review of *Smith v. Everett*, No. 3D24-0054, 2024 WL 4498350 (Fla. 3<sup>rd</sup> October 16, 2024 DCA 2024).

The Supreme Court's appellate jurisdiction includes the authority to review decisions of state courts. 28 U.S.C. § 1257(a). The current statute authorizing Supreme Court review of state court decisions allows the Court to review the judgments of "the highest court of a State in which a decision could be had." *Koon v. Aiken*, 480 U.S. 943 (1987). Here, the judgment for which review is sought, is not to further any further review in the State of Florida and is an effective determination of the litigation. *Flynt v. Ohio*, 451 U.S. 619 (1981); *Florida v. Thomas*, 532 U.S. 774 (2001). *Duquesne Light Co. v. Barasch*, 488 U.S. 299, 304 (1989).

### **3. Federal Rule/Question Involved**

The Federal Rule or Federal Question involved concerns the 5<sup>th</sup> and 14<sup>th</sup> Amendments of the United States Constitution and the right to due process and to be free from arbitrary and capricious rulings by the lower court.

### **4. Statement of the Case**

On December 28, 2024, Petitioner filed a petition for injunction for protection against stalking from Respondent. *See Case Number 2023-025431 FC 04.* [A.47-52]. Respondent is a police officer employed by the South Miami Police Department. [A.47]. The petition alleges that Petitioner is a victim of stalking because Respondent has stalked him, has previously threatened, and harassed him. The Petitioner states the respondent has been harassing-and stalking him since September 2021.

Specifically, the petition alleged the following:

On September 23, 2021, at 1:23 pm, the petitioner parked and exited his vehicle when he noticed the respondent was present. The petitioner also noticed-the respondent was staring at him and felt intimidated by him. The petitioner ignored the respondent and entered the restaurant. As the petitioner exited the restaurant, he took a picture of the respondent

and returned to his vehicle. The petitioner then left the area.

On August 29, 2021, while the petitioner was inside his vehicle playing music, he heard several knocks at his window. When the petitioner looked over his right shoulder, he noticed the respondent had a loaded firearm in his right hand. The petitioner was assaulted and threatened by R.Everett and his loaded firearm. The petitioner slowly rolled down his window and the respondent demanded the petitioner to step out of his vehicle. The petitioner told the respondent that he did not consent for the respondent to search his vehicle and inquired about the respondent's presence. The respondent said "you have a gun." (said as a statement not a question). The respondent unlawfully detained the petitioner as officers from South Miami Police Department searched the petitioner's vehicle, no firearm was found. The petitioner states the officers that unlawfully searched the petitioner's vehicle damaged the interior of his vehicle during the search for the firearm. The petitioner's vehicle was towed.

The petitioner is in fear for his safety due to the respondent's actions and racial profiling by the South Miami Police Department. Therefore, the petitioner is requesting an injunction to restrain the respondent from all further contact. [A. 49].

It should also be noted that other officers were called including officers J. Collins badge 408, P. Vesely badge 192, and even the Sergeant C. Johnson 361 and Anthony Silva badge 429. Anthony Silva is the officer who conducted search inside the vehicle and

Officer C. Johnson issued a citation which the State filed a *nolle prosequi*. Significantly, no firearm was found. Moreover, the respondent damaged the interior of his vehicle during the search and caused Petitioner's vehicle to be towed. Petitioner requested a hearing on the petition. [A. 009].

On the same date that the Petitioner filed the petition, the Honorable Donald Cannava, Circuit Court Judge rendered an Order Denying the Petition for a Temporary Injunction. [A. 044]. The Order stated that the petition was heard *ex parte* on a petition for repeat violence, sexual violence, or dating violence pursuant to Florida Statute §784.046 and contained a box, that was checked, and which stated:

The allegations in the Petition for injunction for Protection do not meet the statutory criteria set forth in 74.30 Florida Statutes or Repeat/Dating /Sexual Violence pursuant to 784.046 Florida Statutes or Stalking pursuant to 784.0485. [A. 044].

On the same day, the same judge, entered another Order that dismissed the petition without affording Petitioner a final hearing on his petition. [A. 21-23].

Petitioner moved for reconsideration and clarification on

December 29, 2023.[A.012-R020]. The motion additionally accused Respondent of excessive use of force and included photographs. [A.021-022]

On January 2, 2024, the motion for reconsideration was denied without any explanation.[A.046]. Notably, at no time, thereafter, did the lower court ever set a full hearing on the petition.

Petitioner timely filed a notice of appeal on January 5, 2024 to the State of Florida District Court of Appeal for the Third District. [A.024-043]. On October 16, 2024, the State of Florida District Court of Appeal for the Third District per curiam affirmed the lower court. *Smith v. Everett*, No. 3D24-0054, 2024 WL 4498350 (Fla. 3<sup>rd</sup> DCA 2024).[a.054] Petitioner sought review in the Florida Supreme Court but it was dismissed *Smith v. Everett*, No. SC2024-1708, 2024 WL 4948301 (Fla. Dec. 3, 2024). [A.053]

This Petition now follows.

### **5. Reasons for Granting the Writ**

Stalking injunctions are governed by Florida Statute §784.0485. Relevant to the issues here, subsections (1) through (5) set forth the pleading requirements, hearing requirements, and what

a trial court must do when it denies a request for an ex parte petition. The Legislature has directed trial courts to set a hearing when a petition for injunction for protection against stalking is filed. *Fla.Stat. §784.0485(4); Fla. Fam. L. R. P. 12.610(b)(3)(A)*. That did not happen here. The trial court simply denied the petition without any reason and without setting the petition for final hearing.

Stalking is the willful, malicious, and repeated following, harassing, or cyberstalking another person. At least two incidents are required. *Fla.Stat. §784.048(2)* and §784.485. In order to be entitled to an injunction for stalking, the Petitioner must allege and prove two separate instances of stalking. *See Roach v. Brower*, 180 So. 3d 1142, 1144 (Fla. 2d DCA 2015). "Each incident of stalking must be proven by competent, substantial evidence to support an injunction against stalking." *Touhey v. Seda*, 133 So. 3d 1203, 1204 (Fla. 2d DCA 2014); *David v. Schack*, 192 So. 3d 625, 627-628 (Fla. 4<sup>th</sup> DCA 2016).

Here, the petition was sworn and included the existence of stalking, and included the specific facts and circumstances for which the injunction was sought as required by Florida

Statute §784.0485(3)(a). The petition alleged a pattern that described how Respondent was wherever the Petitioner was present, and followed Petitioner, harassed Petitioner, falsely detained Petitioner and constantly sought to intimidate Petitioner.

Despite setting forth allegations which constitute stalking, the Court issued an Order that that the petition was heard ex parte on a petition for repeat violence, sexual violence, or dating violence pursuant to Florida Statute §784.046. However, the Petitioner never filed a petition based upon §784.046. On both occasions that petition was filed pursuant to Florida Statute §784.0485, and sought protection from stalking. As such, the order has to be erroneous since it is based upon the wrong statute, the wrong type of petition, and therefore relied upon the incorrect criteria in determining whether to grant the petition.

The lower court also committed reversible error by not granting a temporary injunction. There was sufficient evidence for the entry of a temporary injunction. Florida Statute §784.0485 provides for injunctive relief from stalking." *Caterino v. Torello*, 276 So. 3d 88, 92 (Fla. 2d DCA 2019). Under Florida Statute §784.048(2), "[a] person

who willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person commits the offense of stalking." "Harass" is defined as "engag[ing] in a *course of conduct directed at a specific person* which causes substantial emotional distress to that person and serves no legitimate purpose." *Fla.Stat.784.048(1)(a)*. "Course of conduct" is defined as "*a pattern of conduct composed of a series of acts* over a period of time, however short, which evidences a *continuity of purpose*." *Fla.Satt.784.048(1)(b)*. Thus, by its statutory definition, stalking requires proof of repeated acts. *Stallings v. Bernard*, 334 So. 3d 365 (Fla. 2<sup>nd</sup> DCA 2022); *Lukacs v. Luton*, 982 So. 2d 1217, 1219 (Fla. 1st DCA 2008).

Here, the petition contained sufficient allegations and met all of the pleadings requirements a set forth in Florida Statute §784.0485(1)-(5). The petition specifically alleged that Respondent engaged in several acts which was articulated with specificity, and that those acts were specifically directed to the Petitioner for the sole purpose to harass the Petitioner. Respondent's conduct, which included causing the Petitioner to be stopped against his will, and grabbing his bag without his permission or consent and throwing it on the ground without any legal, moral or other legitimate reason,

cause or justification. Respondent's conduct has caused the Petitioner emotional distress and fear.

The lower court's checking off of a box on what appears to be a boilerplate and/or form order does not explain why the petition was denied temporary relief and why a hearing was not set to determine permanent relief. Simply checking a box that states the allegations were insufficient without any explanation whatsoever as to why they were insufficient or what they were lacking is a conclusory statement that does not address the allegations in the petition, and does not explain why the lower court simply dismissed the verified allegations in the petition.

Notably in *Pashtencko v. Pashtencko*, 148 So. 3d 545, 545-47 (Fla. 2d DCA 2014) the court held that that trial court failed to state a legal ground when it denied a petition for an ex parte temporary injunction against stalking because law enforcement did not find probable cause for arrest for the same allegations made in the petition and the standard of proof for an ex parte injunction was higher, and in *Hawthorne v. Butler*, 151 So. 3d 23, 24 (Fla. 4th DCA 2014) (holding that the denial of a petition for injunction for protection against sexual violence was reversible error when the trial

court denied it because the respondent would be on probation and a no-contact order between the parties should be a provision of probation); and in *Curtis v. Curtis*, 113 So. 3d 993 (Fla. 5th DCA 2013) (holding that the trial court erred when it denied the Petitioner's petition for injunction for protection against domestic violence because the Petitioner could not be in fear since the respondent's bond conditions contained a no-contact provision). In each of those cases the court reversed the denial of a petition despite the courts giving some reason for the denial. Here there is no denial whatsoever, and the denial of the motion for reconsideration simply states denied, again without any explanation.

Lastly, the Court also committed error by failing to set a final hearing on the petition and dismissed the case without offering Petitioner an opportunity to be heard on his petition prior to dismissal. Florida Statute § 784.0485(5)(b) states that denial of a temporary ex parte injunction shall be by written order noting the legal grounds for denial. If the only ground for denial is no appearance of an immediate and present danger of stalking, the court shall set a full hearing on the petition with notice at the earliest possible time. *Fla.Stat. § 784.0485(5)(b); Doe v. Days*, 365 So.3d

1274, 1275 (Fla. 1<sup>st</sup> DCA 2023)(The Legislature has directed trial courts to set a hearing when a petition for injunction for protection against stalking is filed. *See Also* Fla. Fam. L. R. P. 12.610(b)(3)(A). In this case, the January 16, 2024 Order states that there was no appearance of an immediate and present danger of stalking. While that Order states that a hearing will be set, there was never a hearing set, no less within a short period of time.

As such, the lower court committed reversible error, and this matter should be sent back to the lower court with a mandate to set the Petitioner's petition for hearing, and for such other further relief as this Honorable Court deems just and proper.

### **CONCLUSION**

This Court should grant the petition and reverse the lower court's order denying a temporary petition for protection against stalking, and mandate that the lower court set the Petitioner's petition for hearing and for such other further relief as this Honorable Court deems just and proper.

Respectfully submitted,

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