IN THE SUPREME COURT OF FLORIDA

DISTRICT COURT CASE NO. 86-1388

FLORIDA SUPREME COURT CASE NO. 71,578

RONICA STEPHENS,

Petitioner,

vs.

THE STATE OF FLORIDA,

Respondent.



---

On Certiorari from the Third District Court
of Appeal of Florida

---

# JURISDICTIONAL BRIEF OF PETITIONER

Law Offices of
ROBERT KALTER, P.A.
Special Assistant Public Defender
330 Biscayne Boulevard
Penthouse
Miami, Florida 33132
Tel.: (305) 372-3477

## TABLE OF CONTENTS





LAW OFFICES ROBERT KALTER, P.A., PENTHOUSE. 330 BISCAYNE BOULEVARD. MIAMI. FLORIDA 33132. TELEPHONE (305) 372-3477

## TABLE OF CITATIONS

## INTRODUCTION

In this brief Ronica Stephens, Appellant in the lower court, will be referred to as Petitioner and the State of Florida will be referred to as Respondent. References to the items contained in the record on appeal will be denoted as (R _____), and references to the trial transcript will be referred to as (TR _____).

## STATEMENT OF THE CASE

On January 9, 1984, Petitioner, Ronica Stephens, went to a bar in Miami Springs, Florida with the intention of convincing her husband to move back to Ft. Myers, Florida with her and her family. When she arrived at the bar, she ordered a drink and subsequently noticed both her husband and his girlfriend in the bar. At that point, Ms. Stephens went to the back room and had a discussion with her husband concerning his returning to Ft. Myers. When she realized that he was not coming home, Ms. Stephens pulled out a gun and shots were fired. The State's theory was that Petitioner intentionally shot her husband. The Petitioner's theory was that she intended to kill herself and the shots misfired when her husband grabbed the gun (TR 436).

On January 9, 1985, the grand jury returned an indictment charging Petitioner with one count of first degree murder and one count of attempted first degree murder (R 1).

Prior to the trial, counsel for Petitioner had several psychologists examine Ms. Stephen's to determine her mental status. Dr. Haber, a clinical psychologist, concluded that

Petitioner was clinically depressed and suicidal at the time of the shooting and that she did not have the intent to shoot her husband. The State of Florida filed a Motion in Limine to prevent the psychologist's testimony since Petitioner had not entered a plea of not guilty by reason of insanity. The trial court granted the State's Motion in Limine (TR **39**).

On April **29, 1986,** a jury trial commenced. The jury returned verdicts of guilty as to boths Counts I and II of the information. The Court sentenced Petitioner to life imprisonment with a twenty-five (25) year mandatory minimum as to Count I and thirty (30) years as to Count II (R **478-479**).

A Notice of Appeal was filed on May 30, **1986** (R **472**). On appeal, Petitioner raised the issue that the trial court erred in excluding the psychological testimony concerning Appellant's inability to form specific intent. On September 1, **1987,** the Third District Court of Appeal entered its Opinion affirming Petitioner's conviction and reversing her sentence as to Count II of the indictment. In its Opinion the Third District Court of Appeals ruled that since Petitioner had not entered a plea of not guilty by reason of insanity the trial court was correct in excluding psychological testimony concerning whether Appellant had the specific intent to commit first degree murder and attempted first degree murder. A Petition for Rehearing and a Motion to Certify Question to the Florida Supreme Court was filed. These motions were denied.



LAW OFFICES ROBERT KALTER, P.A., PENTHOUSE. 330 BISCAYNE BOULEVARD. MIAMI. FLORIDA 33132. TELEPHONE (305) 372-3477

## SUMMARY OF ARGUMENT

Petitioner was charged with first degree murder and attempted first degree murder. Prior to the trial, the Court granted the State of Florida's Motion in Limine to exclude the testimony of a psychologist who would have testified that at the time of the shooting Petitioner was clinically depressed and suicidal and unable to form the specific intent necessary to commit first degree murder and attempted first degree murder.

In affirming the trial court's ruling the Third District Court of Appeal held that psychological testimony concerning a defendant's inability to form specific intent is inadmissible when there has been a plea of not guilty by reason of insanity. The Opinion of the Third District Court of Appeal, which allows the exclusion of relevant psychological testimony concerning Petitioner's inability to form specific intent, directly conflicts with the Florida Supreme Court case of Gursanus v. State, 451 So.2d 817 (Fla. 1984) which specifically holds that any testimony is relevant if it deals with an individual's ability to form specific intent.

Since the Third District Court of Appeal's Opinion is in direct conflict with the Florida Supreme Court case of Gursanus v. State, supra, this Court should accept jurisdiction to resolve the conflict that now exists.

## ARGUMENT

THE THIRD DISTRICT COURT OF APPEAL'S OPINION WHICH HELD THAT PSYCHOLOGICAL TESTIMONY CONCERNING WHETHER AN INDIVIDUAL WAS ABLE TO FORM THE SPECIFIC INTENT TO COMMIT A CRIME IS NOT ADMISSIBLE UNLESS PETITIONER PLED NOT GUILTY BY REASON OF INSANITY IS IN DIRECT CONFLICT WITH THE FLORIDA SUPREME COURT CASE OF GURGANUS V. STATE, 451 SO.2D 817 (FLA. 1984).

Prior to the trial, a clinical psychologist evaluated Petitioner and came to the conclusion that at the time of the homicide she was clinically depressed and suicidal and this condition prevented her from forming the specific intent to commit first degree murder and attempted first degree murder. The State of Florida filed a Motion in Limine to prevent this testimony since Appellant had failed to file a plea of not guilty by reason of insanity. On appeal to the Third District Court of Appeal, Petitioner raised the issue that the trial court erred in excluding this testimony since this Court in Gurganus v. State, supra, specifically held that evidence concerning a defendant's inability to form specific intent is always relevant in a specific intent crime.

In its Opinion, the Court recognized the fact that the reason defense counsel intended to introduce this testimony was to establish that she could not have formed the specific intent to commit first degree murder. (See footnote 1). The Court ruled that despite the holding in Gurganus v. State, supra, this testimony was not admissible when the Court held the following:

". . .Her second argument, that a psychologist should have been allowed to testify

> regarding her suicidal tendency and depression at the time of the shooting, is, in effect, a 'diminished capacity defense.' This defense has not been adopted in Florida. Campbell v. Wainwright, 738 F.2d 1573, 1581 (11th Cir. 1984), cert. denied, ___ U.S. ___, 106 S.Ct. 1652, 90 L.Ed. 2d 195 (1986). In the absence of a plea of not guilty by reason of insanity, the trial court was correct in excluding the proffered testimony of the two psychologists. Kight v. State, No. 65, 749 (Fla. July 9, 1987) (adhering to Zwigler v. State, 402 So.2d 365, 373 (Fla. 1981), cert. denied, 455 U.S. 1035, 102 S.Ct. 1739, 72 L.Ed.2d 153 (1982), and Tremain v. State, 336 So.2d 705 (Fla. 4th DCA 1976), cert. denied, 348 So.2d 954 (Fla. 1977). (footnotes omitted; emphasis added).

It is Petitioner's position that the Third District Court of Appeal's Opinion is in direct conflict with this Court's opinion in Gurganus. In Gursanus v. State, supra, the defendant was charged with first degree murder and attempted first degree murder. At trial, he sought to introduce the testimony of two psychologists concerning the effects of his consumption of drugs and alcohol. The testimony was excluded. This Court reversed the convictions. In reversing the convictions this Court ruled that evidence concerning Gurganus' ability to form or entertain the specific intent at the time of the offense was relevant, and therefore, the defendant was denied a fair trial when this evidence was excluded. This is evidenced by the following holding by this Court in Gursanus v. State, supra:

> "When specific intent is an element of the crime charsed, evidence of voluntary intoxication, or for that matter evidence of any condition relating to the accused's ability to form a specific intent, is relevant. Cirack v. State, 201 So.2d 706 (Fla. 1967); Garner v. State, 28 Fla. 113, 9

> **S0.835** (1891). . . .In this case, after having been told to presume that Gurganus had ingested Fiorinal and alcohol the psychologists testified that Gurganus would have a lessened capability for making rational choices and directing his own behavior, he would not be in effective control of his behavior, and would have had a mental defect causing him to lose ability to understand or reason accurately. We find these responses to be relevant to the issue of Gurganus' ability to form or entertain a specific intent at the time of the offense. Their exclusion from evidence was error."

The facts in the instant case are identical to the facts in Gursanus v. State, supra:

1. In both cases the crimes charged required that the State prove that the defendant had the specific intent to commit the crime.

2. In both cases the defendant attempted to offer psychological testimony to establish that the defendant was unable to form the specific intent.

3. In both cases the trial court excluded the psychological testimony.

When the Third District Court of Appeal ruled that the trial court correctly excluded the psychological testimony, the Opinion directly conflicted with the Florida Supreme Court's opinion in Gurganus v. State, supra, and therefore, this Court should accept jurisdiction to resolve the conflict that now exists between a case in the Third District Court of Appeal and the Florida Supreme Court case of Gursanus v. State, supra.

In its Opinion the Third District Court of Appeal recognized the fact that the First District Court of Appeal in

the case of Chestnut v. State, 505 So.2d 1352 (Fla. 1st DCA 1987) ruled similar to the Third District Court of Appeal but certified the question to this Court as to whether psychological testimony is admissible when a defendant enters a plea of not guilty by reason of insanity. Counsel has been informed by the Assistant Public Defender who represents Mr. Chestnut that Chestnut v. State, supra, has already been argued and a decision is presently pending from this Court in Case No. 70,628. The facts in the Chestnut case, similar to the facts in Gurganus, are identical to the facts in the instant case. Therefore, since this issue is presently pending before this Court in Chestnut v. State, counsel would urge this Court to accept jurisdiction of this case so that it can be resolved along with Chestnut.



LAW OFFICES ROBERT KALTER, P.A., PENTHOUSE. 330 BISCAYNE BOULEVARD. MIAMI. FLORIDA 33132 .TELEPHONE (305) 372-3477

## CONCLUSION

Since the Third District Court of Appeal's opinion is in direct conflict with the Florida Supreme Court case of Gursanus v. State, supra, this Court should accept jurisdiction to resolve the conflict.

Respectfully submitted,

Law Offices of
ROBERT KALTER, P.A.
Special Assistant Public Defender
330 Biscayne Boulevard
Penthouse
Miami, Florida 33132
Tel.: (305) 372-3477

By: _____
ROBERT KALTER

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Jurisdictional Brief of Petitioner and Appendix was mailed to RICHARD L. POLIN, Assistant Attorney General, Office of the Attorney General, 401 N.W. 2nd Avenue, Suite 820, Miami, Florida 33128; HOWARD BLUMBERG, ESQ., Office of the Public Defender, 1351 N.W. 12th Street, Miami, Florida 33125; and MS. RONICA STEPHENS, #160723-375, Broward Correctional Institution, P.O. Box 8540, Pembroke Pines, Florida 33024 on this 4th day of December, 1987.

By: _____
ROBERT KALTER