

IN THE SUPREME COURT OF FLORIDA

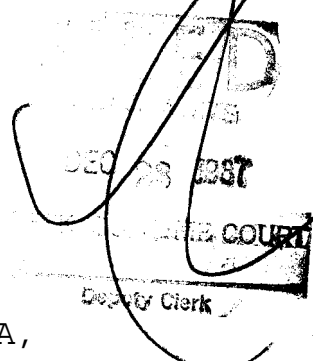
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CASE NO.

RONICA STEPHENS,

Petitioner,

vs.



THE STATE OF FLORIDA,

Respondent.

\* \* \* \* \*

ON PETITION FOR DISCRETIONARY REVIEW

\* \* \* \* \*

BRIEF OF RESPONDENT ON JURISDICTION

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## INTRODUCTION

Petitioner, RONICA STEPHENS, was the appellant in the court below and the defendant in the trial court. Respondent, THE STATE OF FLORIDA, was the appellee below and the prosecution in the trial court. The Appendix to the Jurisdictional Brief of Petitioner will be referred to by the symbol "App." and the exhibit number assigned, Although Respondent objects to references to the Record-on-Appeal and Transcript of lower-court proceedings because they are not before this Court, in view of the fact that the Petitioner has referred to them rather extensively in her Statement of the Case (Jurisdictional Brief of Petitioner, 1-2), the Respondent will also refer to them by the symbols "R" and "T", respectively. All emphasis is supplied unless otherwise indicated.

## STATEMENT OF THE CASE AND FACTS

The Petitioner's Statement of the Case and Facts, although generally a correct account of the proceedings below, contains a number of errors and omissions which are corrected below as a condition of Respondent's acceptance thereof:

First, the testimony of the psychologists was not offered for the purpose of showing that the defendant did not have the intent to shoot her husband, as inferred by the Petitioner (Petitioner's Brief, 1-2), but to show that the Petitioner suffered from a condition which could affect her ability to form the specific intent required, as shown by the following excerpt:

MR. McDONALD: Yes. We will introduce, I think, through direct testimony or through cross examination, other foundation evidence linking her mental state or describing her mental state from approximately February of 1984 through the date of the event and it is the way it changed over that course of time, Dr. Jones will fit in with his observations as of September, 1984, all of this material testing and personal examination by Dr. Haber will be the foundation for Dr. Haber's testimony which will be that at the time of the offense this lady was suffering from a severe depression disorder as defined in DSM-3 and will explain how that particular disorder could affect her ability to form the specific intent required in the two charges pending against her.

THE COURT: In other words, what you are saying here is that there is an insanity defense, per se, that she knew right from wrong, but rather you seek to introduce this testimony to show that this defendant was incapable of forming the specific intent? Although you are not telling me that that will be Dr. Haber's testimony, what you are telling me is that will raise some questions as to her ability to form the specific intent?

MR. McDONALD: Exactly. Dr. Haber will not be allowed and we will not attempt to have her testify, "It is my psychological opinion with the relevant degrees that at the exact instant the shot was fired, this lady did not have the specific intent." She will get into what was going on, what her mental state was at the time based on her evaluations and it will be for the jury to decide whether or not that affected her ability to make the specific intent.

(T.7-8).

The testimony would not have been useful for its proffered purpose where Dr. Haber, the primary psychologist relied upon, opined that the Petitioner was perfectly capable of formulating the necessary specific intent at the time of the crime (R.133, T.32-33). Dr. Jones never expressed an opinion on the issue, at all (R.138-166), the defense intended to call him essentially to provide background for Dr. Haber's testimony (T.6-7) and, at the proffered deposition, he testified that he had never been requested to render an opinion on her state of mind on the night of the murder (R.160).

The State reserves the right to argue additional facts in the argument portion of its brief, as appropriate.

ISSUE PRESENTED FOR REVIEW

WHETHER THE OPINION OF THE THIRD DISTRICT COURT OF APPEAL IN THIS CASE IS NOT IN DIRECT AND EXPRESS CONFLICT WITH THE FLORIDA SUPREME COURT CASE OF GURGANUS v. STATE, 451 SO.2D 817 (FLA. 1984)? (Restated).

SUMMARY OF THE ARGUMENT

The decision in this case is not in conflict with Gurganus v. State, 451 So.2d 817 (Fla. 1984) and is completely consistent with that opinion.

The opinion of the concerned psychologist, in this case, was that the Petitioner was perfectly capable of forming the premeditated intent necessary to commit the crime, but that the psychologist ~~didn't~~ think she did (R.133, T.32-33). Therefore, the testimony would have been useless for the purpose of showing that Petitioner suffered from a condition that prevented her from forming the specific intent necessary, the issue concerned in Gurganus.

However, the defense had precluded itself from asking the psychologist if Ms. Stephens ~~had~~ the specific intent necessary (T.8), a use of expert testimony which would appear to be precluded by Gurganus, anyway.

This Court should decline jurisdiction.

ARGUMENT

THE OPINION OF THE THIRD DISTRICT COURT  
OF APPEAL IN THIS CASE IS NOT IN DIRECT  
AND EXPRESS CONFLICT WITH THE FLORIDA  
SUPREME COURT CASE OF GURGANUS v. STATE,  
451 SO.2D 817 (Fla. 1984). (Restated).

The decision in this case does not either directly or expressly conflict with Gurganus v. State, 451 So.2d 817 (Fla. 1984) and jurisdiction should, therefore, be declined.

First, it should be noted that, although the Petitioner alleges, without indicating any record support for the allegation, that the proffered testimony would have shown that she suffered from a mental condition that prevented her from forming the specific intent required (Petitioner's Brief, 4). This allegation is, in fact, refuted by the record, which shows that the Petitioner ". . . certainly could have" formed the necessary premeditated intent to kill her husband (R.133, T.32-33), according to the psychologist whose testimony is concerned. The usefulness of the psychologist's testimony to Ms. Stephens would, therefore, have been necessarily limited to the opinion that, although she could have formulated the necessary intent, Dr. Haber simply didn't

think that she did (R.133, T.33), a purpose for which that testimony was never offered and which answered a question which the defense stated it would not ask (T.8).

Therefore, the only use of the testimony concerned would have been, not to the issue of whether Ms, Stephens could have formulated the necessary premeditated intent, but whether she did. It is, therefore, extremely similar to testimony on whether the defendant's state of mind at the time of the crime was closer to a "depraved mind" than a "premeditated plan", held, in Gurganus, to be a legal conclusion, reserved to the jury, on which an expert may not speak. Gurganus v. State, 451 So.2d 817, 821-822 (Fla. 1984).

Therefore, the opinion of the Third District not only does not contradict Gurganus, but is entirely consistent with it. This Court should, therefore, decline jurisdiction.

CONCLUSION

The opinion of the Third District Court of Appeal is not in express and direct conflict with Gurganus v. State, 451 So.2d 817 (Fla. 1984) and, therefore, this Court should decline jurisdiction.

Respectfully submitted,

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CERTIFICATE OF SERVICE

305-372-3477

I HEREBY CERTIFY that a true and correct copy of the foregoing BRIEF OF RESPONDENT ON JURISDICTION was furnished by mail to the Law Offices of ROBERT KALTER, P.A., Special Assistant Public Defender, 330 Biscayne Boulevard, Penthouse, Miami, Florida 33132, on this 21st day of December, 1987.

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