

# Supreme Court of Florida

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No. 73,555  
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RIGOBERTO GARCIA,  
Petitioner,  
vs.  
STATE OF FLORIDA,  
Respondent.

[November 22, 1989]

PER CURIAM.

We have for review Garcia v. State, 535 So.2d 290 (Fla. 3d DCA 1988), based on certified conflict with Niblack v. State, 451 So.2d 539 (Fla. 2d DCA 1984), and Lowe v. State, 500 So.2d 578 (Fla. 4th DCA 1986). We have jurisdiction. Art. V, § 3(b)(4), Fla. Const.

This case presents the question of whether it is reversible error for a trial court to refuse to reinstruct on justifiable and excusable homicide when it reinstructs on manslaughter. We recently have answered this question in the affirmative in Stockton v. State, 544 So.2d 1006 (Fla. 1989). Accordingly, we quash the opinion below and remand for further proceedings consistent with our opinion in Stockton.

It is so ordered.

EHRlich, C.J., and OVERTON, McDONALD, SHAW, BARKETT, GRIMES and KOGAN, JJ., Concur

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

Application for Review of the Decision of the District Court  
of Appeal - Certified Direct Conflict of Decisions

Third District - Case No. 87-2543  
(Dade County)

Peter Raben of the Law Office of Peter Raben, P.A., Coconut Grove,  
Florida,

for Petitioner

Robert A. Butterworth, Attorney General; and Yvette Rhodes Prescott  
and Michael J. Neimand, Assistant Attorneys General, Miami,  
Florida,

for Respondent