## Third District Court of Appeal

## State of Florida, July Term, A.D. 2011

Opinion filed December 28, 2011. Not final until disposition of timely filed motion for rehearing.

> No. 3D10-722 Lower Tribunal No. 08-24373

> > \_\_\_\_

William Garrido,

Appellant,

VS.

## State of Florida,

Appellee.

An Appeal from the Circuit Court for Miami-Dade County, David C. Miller, Judge.

Carlos J. Martinez, Public Defender, and Joanna G. Ingalls and Thomas Regnier, Assistant Public Defenders, for appellant.

Pamela Jo Bondi, Attorney General, Forrest L. Andrews, Jr., Assistant Attorney General, and Douglas Glaid, Senior Assistant Attorney General, for appellee.

Before RAMIREZ, SHEPHERD and SUAREZ, JJ.

PER CURIAM.

William Garrido appeals his conviction and sentence for second degree murder, alleging the trial court erred in the manslaughter instruction given to the

jury. We affirm based on <u>Figueroa v. State</u>, Case No. 3D10-27 (Fla. 3d DCA Nov. 16, 2011). As we did in Figueroa, we certify conflict with the First District's opinions in <u>Noack v. State</u>, 61 So. 3d 1208 (Fla. 1st DCA 2011), <u>Pryor v. State</u>, 48 So. 3d 159 (Fla. 1st DCA 2010), and <u>Riesel v. State</u>, 48 So. 3d 885 (Fla. 1st DCA 2010).

Additionally, we certify the following question to the Florida Supreme Court as one of great public importance:

IF A JURY RETURNS A VERDICT FINDING A DEFENDANT GUILTY OF SECOND-DEGREE MURDER IN A CASE WHERE THE EVIDENCE DOES NOT SUPPORT A THEORY OF CULPABLE NEGLIGENCE, DOES A TRIAL COURT COMMIT BY**FUNDAMENTAL ERROR GIVING FLAWED** MANSLAUGHTER BY ACT INSTRUCTION WHEN IT ALSO **GIVES** AN INSTRUCTION ON MANSLAUGHTER BY CULPABLE NEGLIGENCE?

Affirmed.