

IN THE DISTRICT COURT OF APPEAL  
FIRST DISTRICT, STATE OF FLORIDA

FLOYD BOARD,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

NOT FINAL UNTIL TIME EXPIRES TO  
FILE MOTION FOR REHEARING AND  
DISPOSITION THEREOF IF FILED

CASE NO. 1D12-5488

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Opinion filed December 10, 2013.

An appeal from the Circuit Court for Duval County.

Kevin A. Blazs, Judge.

Nancy A. Daniels, Public Defender, and A. Victoria Wiggins, Assistant Public Defender, Tallahassee, for Appellant.

Pamela Jo Bondi, Attorney General, and Heather Flanagan Ross, Assistant Attorney General, Tallahassee, for Appellee.

SWANSON, J.

We reverse the trial court's order of restitution and appellant's judgment and sentence. Appellee has correctly conceded that the trial court was divested of jurisdiction of the underlying charges when the state filed its third amended information by which all that remained to be tried were three first-degree

misdemeanors. See Art. V, § 20(c)(3) & (4), Fla. Const.; §§ 26.012(2)(d) & 34.01(1)(a), Fla. Stat. (2011). See also Oglesby v. State, 911 So. 2d 1288, 1288 (Fla. 1st DCA 2005) (citing Glass v. State, 832 So. 2d 837 (Fla. 5th DCA 2002), and Woods v. State, 556 So. 2d 493 (Fla. 1st DCA 1990)); accord Pinkard v. State, 852 So. 2d 377 (Fla. 5th DCA 2003). The issue of subject matter jurisdiction is one of fundamental error that may be addressed for the first time on appeal. Oglesby, 911 So. 2d at 1288 (citing Booker v. State, 497 So. 2d 957 (Fla. 1st DCA 1986)).

REVERSED.

WETHERELL and OSTERHAUS, JJ., CONCUR.