# FLORIDA TRAFFIC-RELATED APPELLATE OPINIONS

*January - March 2013*

***[Editor's Note: In order to reduce possible confusion, the defendant in a criminal case will be referenced as such even though his/her technical designation may be appellant, appellee, petitioner, or respondent. In civil cases, parties will be referred to as they were in the trial court, that is, plaintiff or defendant. In administrative suspension cases, the driver will be referenced as the defendant throughout the summary, even though such proceedings are not criminal in nature. Also, a court will occasionally issue a change to a previous opinion on motion for rehearing or clarification. In such cases, the original summary of the opinion will appear followed by a note. The date of the latter opinion will control its placement order in these summaries.]***



## I. Driving Under the Influence (DUI)

***Kopson v. State*, ___ So. 3d ___ (Fla. 4th DCA 2013), 38 Fla. L. Weekly D108, January 9, 2013, 4D11-2590.**

The district court affirmed in part and reversed in part the lower court's adjudication on several counts related to a DUI manslaughter case. The defendant was driving with a suspended license when he struck two pedestrians, killing one and causing serious bodily injury to the other. The defendant entered an open plea of guilty to seven counts, including DUI manslaughter with unlawful blood-alcohol level (UBAL) (count I), DUI manslaughter (impairment) (count II), DUI with serious bodily injury (count III), DUI with serious bodily injury (count IV), felony DUI based upon a fourth conviction (count V), driving with a suspended license (DWSL) causing death (count VI), and DUI with property damage (count VII). His blood alcohol levels were .39 and .37. The defendant had four prior DUIs stemming from three different criminal episodes. The trial court adjudicated the defendant guilty on all counts.

The trial court suspended sentences on counts I, IV, and VI on double jeopardy grounds; however, the district court held that it was fundamental error to adjudicate the defendant guilty on all counts. *See Ivey v. State*, 47 So. 3d 908 (Fla. 3d DCA 2010). The district court held that count VI violates double jeopardy in relation to count II because a defendant cannot be convicted of both DUI manslaughter and DWSL causing death where there is only a single death; count IV violates double jeopardy in relation to count III because a defendant cannot be convicted of both DUI with serious bodily injury while impaired and DUI with serious bodily injury with an unlawful blood alcohol level under the same statute; and count I violates double jeopardy in relation to count II because a defendant cannot be convicted of DUI manslaughter twice for the same death. *See State v. Cooper*, 634 So. 2d 1074, 1074–75 (Fla. 1994). The district court remanded the case with an order to vacate the adjudications on counts I, IV, and VI. http://www.4dca.org/opinions/Jan%202013/01-09-13/4D11-2590.op.pdf

***Allen v. State*, ___ So. 3d ___ (Fla. 4th DCA 2013), 38 Fla. L. Weekly D190, January 23, 2013, 4D11-2665.**

The district court reversed in part and affirmed in part the defendant's conviction stemming from a DUI arrest. The defendant was charged with DUI – impairment, with three priors, and refusal to submit to testing, with one prior. Following a jury trial, he was found guilty as charged on both counts. The defendant, on appeal, claimed that "his trial counsel was ineffective for failing to sever the refusal count from the DUI count, such failure being tantamount to informing the jury that he had a prior DUI, because the predicate for the refusal charge was a prior refusal." The district court held that a trial court should sever charges "before trial on a showing that the severance is appropriate to promote a fair determination of the defendant's guilt or innocence of each offense." Fla. R. Crim. P. 3.152(a)(2)(A) (2009). The court noted that Florida Standard Jury Instruction (Crim.) 28.2 (2009), concerning the offense of felony DUI, provides that the jury first is instructed on the elements of DUI; then, if it finds the defendant guilty, the jury is required to determine, in a bifurcated procedure, whether the state proved the prior convictions. *State v. Harbaugh*, 754 So. 2d 691, 693 (Fla. 2000). The court held that that the defendant's above-stated claim for relief "constituted a facially sufficient ground for relief and remand for either the attachment of additional portions of the record conclusively refuting the claim or an evidentiary hearing. *See Johnson v. State*, 14 So.3d 1282, 1283 (Fla. 2d DCA 2009)."
http://www.4dca.org/opinions/Jan%202013/01-23-13/4D11-2665.op.pdf

## II. Criminal Traffic Offenses

***Dorsett v. State*, ___ So. 3d ___ (Fla. 4th DCA 2013), 38 Fla. L. Weekly D233, January 30, 2013, 4D11-1530.**

The district court granted the defendant's appeal of his conviction and sentence for leaving the scene of a crash involving injury and remanded to the circuit court. The defendant was driving a heavy pickup as it began to rain. The defendant was unaware that a young teenager had lost control of his skateboard and fell as he crossed the road, hitting the truck's passenger side undercarriage. The defendant continued traveling north at a normal rate of speed and did not stop. He was not under the influence of drugs or alcohol. After being stopped by law enforcement, the defendant stated had he known he had hit somebody, he would have "definitely" stopped his truck. The state charged the defendant with leaving the scene of a crash involving injury under section 316.027, Florida Statutes (2006). The defendant argued that the standard jury instructions included an incorrect statement of law regarding section 316.027, Florida Statutes (2006), because the law requires actual knowledge of the accident, and requested a special jury instruction. The state responded that the defendant's special jury instructions were properly rejected because the standard jury instructions accurately reflected the law under *State v. Mancuso*, 652 So. 2d 370 (Fla. 1995). Here, the defense requested "a special instruction attempting to cull from *Mancuso* the supreme court's acknowledgement that a defendant must first know of the accident before he either knows or should know of the injury," as the defendant claimed to have no knowledge of the accident itself. The district court recognized "there was testimony from which a jury may have determined that the defendant actually knew of the

accident, but the jury was not instructed that actual knowledge of the accident had to be proved." As such, the conviction was reversed and remanded to the circuit court.

The district court also certified the following question to the supreme court:

> *"In a prosecution for violation of section 316.027, Florida Statutes (2006), should the standard jury instruction require **actual** knowledge of the crash?" (emphasis in original)*

http://www.4dca.org/opinions/Jan%202013/01-30-13/4D11-1530.op.pdf

## III. Arrest, Search and Seizure

***State v. Thomas*, ___ So. 3d ___ (Fla. 5th DCA 2013), 38 Fla. L. Weekly D372, February 15, 2013, 5D12-392.**

The district court granted the defendant's motion to suppress, reversing the circuit court's ruling, and remanded the case for further proceedings. The defendant was charged with possession of oxycodone, possession of 20 grams or less of cannabis, and possession of drug paraphernalia. The charges were filed following a traffic stop of the defendant's vehicle. The defendant filed a motion to suppress, "alleging that the stop was pretextual, that he did not voluntarily consent to a search of his person, and that the search of his wallet exceeded the scope of any consent he may have given." The circuit court denied the motion to suppress. The district court held that the trial court "erred in its determination that: (1) the arresting officer's suspicion of drug activity invalidated an otherwise proper traffic stop for illegal window tint, (2) Miranda warnings were required when the officer questioned Thomas after observing the degree of his nervousness, and (3) a general consent to search did not include a consent to search Thomas' wallet."
http://www.5dca.org/Opinions/Opin2013/021113/5D12-392.op.pdf

***State v. Arevalo*, ___ So. 3d ___ (Fla. 4th DCA 2013), 2013 WL 811586, March 6, 2013, 4D11-3728.**

The district court reversed the trial court's granting of the defendant's motion to suppress and remanded the case to the circuit court for further proceedings. The issue at hand is whether the trial court erred in granting the defendant's motion to suppress on the grounds that a deputy could not call the defendant back to the defendant's vehicle after observing him illegally park his car and then walk away. The district court found that the officer had the authority to call the defendant back to his vehicle and that the trial court erred by granting the motion to suppress. The court noted that "the deputy had probable cause to conduct a traffic stop under section 316.1945(1)(c)2., Florida Statutes (2011), which states that no person shall '[p]ark a vehicle, whether occupied or not, except temporarily for the purpose of, and while actually engaged in, loading or unloading merchandise or passengers' '[a]t any place where official signs prohibit parking.' An officer who finds a vehicle parked in violation of this section may either '[i]ssue a ticket form as may be used by a political subdivision or municipality to the driver' or '[i]f the

vehicle is unattended, attach such ticket to the vehicle in a conspicuous place.'" § 316.1945(3), Fla. Stat. (2011).
http://www.4dca.org/opinions/Mar%202013/03-06-13/4D11-3728.op.pdf

***State v. Allen*, ___ So. 3d ___ (Fla. 4th DCA 2013), 2013 WL 950023, March 13, 2013, 4D11-4389.**

The district court reversed the circuit court's granting of the defendant's motion to suppress, and remanded for further consideration. The defendant was stopped pursuant to section 316.3045(1)(a), Florida Statutes (2010), which made it unlawful for a person operating a motor vehicle to operate the radio loud enough to be plainly audible 25 feet or more from the vehicle. The defendant "was subsequently searched and charged with driving while license suspended and possession of Alprazolam. After her arrest, the statute authorizing the stop was declared unconstitutional by *State v. Catalano*, 60 So. 3d 1139 (Fla. 2d DCA 2011), *aff'd*, 104 So. 3d 1069 (Fla. 2012). As a result, [the defendant] filed a motion to suppress, arguing the officer did not have reasonable suspicion for the stop of her vehicle." The district court reversed the granted motion, finding "the officer operated on a good faith basis that the statute was constitutional at the time of the stop. *State v. Lockett*, 101 So. 3d 1275, 1276 (Fla. 4th DCA 2012) (concluding that, 'before the decision in *Catalano*, a reasonable police officer would not have known that the noise statute was unconstitutional')." http://www.4dca.org/opinions/Mar%202013/03-13-13/4D11-4389.op.pdf

***Leslie v. State*, ___ So. 3d ___ (Fla. 5th DCA 2013), 38 Fla. L. Weekly D489, March 1, 2013, 5D12-1303.**

The district court reversed the circuit court's denial of the defendant's motion to suppress and remanded the case for further proceedings. "The defendant was charged with possession of cocaine and possession of 20 grams or less of marijuana. He filed a motion to suppress the contraband based on the claim that its discovery resulted from an unlawful seizure," arguing "that the police lacked reasonable suspicion to conduct a traffic stop of his vehicle. At the suppression hearing, a law enforcement officer testified that he saw the defendant's vehicle driving toward him, and he noticed that the vehicle did not have a center rearview mirror. The officer believed that this absence of a mirror was a traffic violation and, therefore, waved down the vehicle. . . . The defendant contends that the trial court erred in denying his motion to suppress because the traffic stop was based on a mistake of law." The district court agreed, finding that "[a]n officer's mistake of law as to what constitutes a traffic violation cannot provide reasonable suspicion justifying a traffic stop. *Hilton v. State*, 961 So. 2d 284, 298 (Fla. 2007); *State v. Wimberly*, 988 So.2d 116, 119 n. 2 (Fla. 5th DCA 2008)."
http://www.5dca.org/Opinions/Opin2013/022513/5D12-1303.op%20.pdf

***Rutledge v. State*, ___ So. 3d ___ (Fla. 4th DCA 2013), 2013 WL 1136421, March 20, 2013, 4D10-5352.**

The district court affirmed the lower court's ruling and denied the defendant's motion to declare sections 893.101 and 893.13, Florida Statutes (2007), facially unconstitutional and to vacate his conviction and sentence for possession of marijuana in excess of 20 grams. The

district court also denied the defendant's claim that the lower court "committed fundamental error in denying his motion to suppress the evidence obtained from an alleged illegal stop where the court listened to hearsay testimony of the arresting officer as a substitute for the testimony of the actual informant."

"The defendant was charged with carrying a concealed firearm and possession of marijuana in excess of twenty grams. He waived his right to a jury trial on the two charges and subsequently filed a motion to suppress physical evidence and statements stemming from the stop of his vehicle. Without objection, the trial court heard [the defendant's] motion to suppress and the nonjury trial simultaneously. . . . The trial court found him guilty as charged." On appeal, the defendant conceded that the deputy's stop of his vehicle "meets the standards set forth in *Whren v.United States*, 5[17] U.S. 806 (1996)." The defendant recognized "that the broken taillight on the car he was operating provided the deputy with probable cause to believe [the defendant] was committing a traffic infraction, forming an objective basis for the stop. Therefore, the district court found that no fundamental error had been committed and affirmed the lower court's guilty verdict."
http://www.4dca.org/opinions/Mar%202013/03-20-13/4D10-5352.op.pdf

***State v. Deaton*, ___ So. 3d ___ (Fla. 4th DCA 2013), 2013 WL 1136325, March 20, 2013, 4D11-4628.**

The district court affirmed the lower court's order granting the defendant's motion to suppress, finding "the arresting officer lacked probable cause to make an arrest despite finding one loose oxycodone pill in the defendant's pocket during a consensual search performed after a traffic stop for a parking violation." The defendant improperly parked his car, after which a detective conducted a traffic stop. "The detective asked the defendant for his driver's license and confirmed it 'was good.' [The defendant] then 'consented' to a search of his person, during which the detective found one 30 mg oxycodone pill loose in the right coin pocket of his pants. The defendant then explained that he had a prescription at home, but the detective arrested him on the spot."

The defendant "moved to suppress the seizure of the pill, arguing that the detective lacked probable cause to make the warrantless arrest. The circuit court agreed and granted the motion, concluding that 'there was nothing in and of itself in terms of the nature of the pill and how the pill was being carried on his person that gave [the detective] probable cause to arrest for the felony.'" The district court held that "unlike a drug such as heroin, oxycodone may be lawfully possessed with a prescription. *See* §§ 893.03(2)(a)1.o, 893.13(6)(a), Fla. Stat. (2011). "The district court found that possession of a single pill in his pocket implied that the defendant 'was the ultimate user and nothing more.' *People v. Coates*, 266 P.3d 397, 400 (Colo.2011). Possession of the lone pill did not create a 'fair probability that he had more of the same.' *Id.* Likewise, nothing [the defendant] did prior to the stop was consistent with a person trying to buy or sell drugs on the street. When confronted by the detective, the defendant did not engage in guilty behavior by running away or dropping the pill on the roadway. As the circuit judge noted, it is not unusual for a traveler with a valid prescription to separate a pill from a prescription bottle for later consumption." Ultimately, the court held that the defendant's possession of the single pill did not give rise to probable cause that he was committing a felony.

http://www.4dca.org/opinions/Mar%202013/03-20-13/4D11-4628.op.pdf

## IV. Torts/Accident Cases

***Smyth ex rel. Estate of Smythe v. Infrastructure Corp. of America*, ___ So. 3d ___ (Fla. 2d DCA 2013), 38 Fla. L. Weekly D203, January 25, 2013, 2D10-5520.**

The district court granted the plaintiff's motion to overturn summary judgment and remanded this case to the trial court. This case involved an automobile accident where the decedent was allegedly killed due to the negligence of the operator of a large mowing tractor, an uninsured subcontractor of one of the defendants, who was driving in the fast lane of an interstate highway at less than 30 miles per hour after nightfall. The subcontractor was mowing the interstate right-of-way under a contract between the defendants, including the Department of Transportation. "Although the trial court did not explain its reasons for granting this summary judgment, [the defendants] maintain that the driver of the mowing tractor either was not negligent as a matter of law or that his negligence did not cause the accident. They further maintain that they are not legally responsible for the actions of this subcontractor." The district court held that the defendants "clearly have not established the absence of a question of fact as to the negligence of the operator of the tractor or his causal role in this accident." The district court also held that the trial court erred in determining that, as a matter of law, the duty to use reasonable care in the operation of large mower tractors on the paved portions of interstate highways could be delegated and had been successfully delegated to the subcontractor. On remand, the district court ordered the trial court to allow the record to be fully developed concerning the operation of these tractors and then should make a determination as to these issues.
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2013/January/January%2025,%202013/2D10-5520.pdf

***Carrasquero v. Mapfre Insurance Co. of Florida*, 106 So. 3d 989 (Fla. 3d DCA 2013).**

The district court held that as the holding in the underlying case compels (a third-party auto body shop was not the owner of the vehicle involved in the instant accident) "the concomitant conclusion that it and its driver, the actual owner, were not covered under [the third party's] liability policy with the [defendant] insurer here. *See State Farm Mut. Auto. Ins. Co. v. Hartzog*, 917 So. 2d 363 (Fla. 1st DCA 2005); *Se. Fidelity Ins. Co. v. Rice*, 515 So.2d 240 (Fla. 4th DCA 1987)."
http://www.3dca.flcourts.org/Opinions/3D11-2971.op.pdf

***Ortiz v. Regalado*, ___ So. 3d ___ (Fla. 2d DCA 2013), 38 Fla. L. Weekly D502, March 1, 2013, 2D11-1071.**

The district court affirmed in part and reversed in part the circuit court's holdings in the underlying case, and certified the following question as one of great public importance:

*Does section 324.021(9)(b)(3) apply to limit the amount of damages one co-owner of a vehicle must pay when the other co-owner operates their jointly owned vehicle negligently and incurs damages payable to a third party?*

This case arose out of a fatal automobile accident. The defendant's son was involved in a fatal collision with the plaintiff and her three minor children, one of whom died in the crash. The court examined two issues: first, whether the trial court erred in denying the non-operator defendant the benefit of a statutory cap on a damage award against an owner of a vehicle who entrusts it to another (section 324.021(9)(b)(3)); and second, whether the defendant should be required to pay damages that exceed the defendant's son's percentage of fault. The district court held the trial court did not err in denying the cap, as the operator was a co-owner of the vehicle rather than someone the non-operator "lent" the car to. As to the second issue, the district court reversed that part of the final judgment that awarded the plaintiff one million dollars and remanded for consideration of the contribution issue, as the contribution issue was not decided in the same case. The court recognized that "a contribution issue can be determined in a separate action. *See* § 768.31(4)(a), (c). [However, the defendant,] with good reason and as allowed by statute, wanted it determined in this suit. . . . [T]he better course of action was to have the issue decided as part of the same suit, as was [the defendant's] prerogative."
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2013/March/March%2001,%202013/2D11-1071.pdf

***Claudio v. Regalado*, ___ So. 3d ___ (Fla. 2d DCA 2013), 38 Fla. L. Weekly D498, March 1, 2013, 2D11-1073.**

The district court affirmed in part and reversed in part the circuit court's holdings in the underlying case. This case arose out of a fatal automobile accident. The defendant was involved in a fatal collision with the plaintiff and her three minor children, one of whom died in the crash. The jury found both the plaintiff and defendant were each 50% negligent. It was only the apportionment of the jury's damage award in the final judgment that the defendant challenged on appeal. There were two issues in this appeal: first, that the circuit court erred in denying the defendant's motion for leave to file a counterclaim for contribution against the plaintiff; and second, that he should not be required to pay damages to the plaintiff that exceeded his percentage of fault. The district court agreed with the defendant, reversing on both issues. The district court also certified the following questions for the supreme court as ones of great public importance:

*After the effective date of chapter 2006-6, section 1, at 191-92, Laws of Florida, is a defendant precluded from raising a claim for contribution in a suit alleging negligence via a counterclaim or a third-party claim?*

*If the answer to the above question is yes, and under the circumstances of this case, must judgment finding the defendant partially at fault be paid in full by the defendant regardless of that defendant's partial fault before the defendant is entitled to contribution from the plaintiff/co-tortfeasor?*

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2013/March/March%2001,%202013/2D11-1073.pdf

***Whitney v. Milien*, ___ So. 3d ___ (Fla. 4th DCA 2013), 2013 WL 1136409, March 20, 2013, 4D11-1565, 4D11-3792.**

The district court affirmed the lower court's ruling and denied the defendant's motion for a new trial and/or remittitur and final judgment entered in favor of the plaintiff. "The plaintiff was a rear-seat passenger in a motor vehicle when it was struck in the rear by a motor vehicle driven by the defendant. As a result of the collision, the plaintiff was rendered a quadriplegic. [The trial] turned mainly on the issues of comparative negligence and the reasonable and probable cost of the plaintiff's future medical care." On appeal, the defendant argued "that counsel exceeded the bounds of proper closing argument and made highly prejudicial and inflammatory arguments requiring a new trial." The district court found that the trial court did not abuse its discretion in denying the motion for new trial based on improper arguments by the plaintiff's counsel. The defendant additionally argued "that the trial court should have awarded a new trial, or at a minimum a remittitur, because the verdict was excessive and against the manifest weight of the evidence. The standard of review for an order denying a motion for new trial or denying a remittitur is abuse of discretion. *See Brown v. Estate of Stuckey*, 749 So. 2d 490, 497 (Fla. 1999)." The appellate court held that it "should not disturb a verdict as excessive, where the trial court refused to disturb the amount, unless the verdict is so inordinately large as to obviously exceed the maximum limit of a reasonable range within which the jury may properly operate. . . . Here, although disputed, evidence was presented which supports the jury's verdict."
http://www.4dca.org/opinions/Mar%202013/03-20-13/4D11-1565.op.pdf

***Smith v. Llamas*, ___ So. 3d ___ (Fla. 2d DCA 2013), 2013 WL 1222958, March 27, 2013, 2D11-5540.**

The district court reversed the circuit court's order granting the plaintiff's motion for a new trial, and reinstated the verdict, as it was not against the manifest weight of the evidence. This case arose from an automobile accident in Collier County. The defendant was attempting to make a left turn when the parties' vehicles collided. At trial, the jury found the defendant solely liable for the damages and awarded the plaintiff $37,000 for past medical expenses. However, the jury found that the plaintiff's injuries were not permanent and awarded zero damages for future care. The jury also awarded zero damages for pain and suffering. The plaintiff "filed a motion for a new trial on damages, arguing that the verdict was contrary to the manifest weight of the evidence. He claimed that the substantially undisputed evidence presented at trial established that he suffered permanent injuries." The motion was granted and a new trial ordered. The district court concluded that the trial court abused its discretion by granting a new trial. There was conflicting evidence on whether the plaintiff sustained permanent injuries in the accident. Moreover, the district court held the jury could have concluded that the plaintiff did not sustain some of his injuries as a result of the accident in light of evidence that the plaintiff had provided an inaccurate medical history and did not seek treatment for some of his injuries until eight months after the accident. The district court reversed and remanded for the trial court to reinstate the verdict.
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2013/March/March%2027,%202013/2D11-5540.pdf

## V. Drivers' Licenses

***State v. Lee*, ___ So. 3d ___ (Fla. 5th DCA 2013), 38 Fla. L. Weekly D434, February 22, 2013, 5D12-1097.**

The district court reversed the defendant's sentence, based on the State's appeal claiming that the record lacked support for the sentence. The defendant's vehicle "was stopped for illegal tint. It turned out that his license had been revoked for 60 months as a habitual traffic violator. [The defendant] entered an open plea to felony driving while license suspended with a guideline minimum sentence of 19.5 months in the Department of Corrections. The trial judge mitigated the sentence and imposed a sentence of 19.5 months incarceration but suspended it upon Lee's completion of 24 months' probation. The court's departure reasons were that Lee was cooperative and remorseful." The defendant admitted that his license was suspended and "possibly habitual." "His scoresheet revealed, in addition to one first-degree felony, two second-degree felonies, five third-degree felonies, and several misdemeanors, including four for driving while license suspended. [His] cooperation was minimal at best and he failed to establish this basis for departure." The district court also held that "[t]here was no finding by the trial judge that the offense was unsophisticated or, after four previous arrests for substantially the same offense, that it was an isolated incident. Further, there was no evidence in the sentencing record to justify a finding of remorse."
http://www.5dca.org/Opinions/Opin2013/021813/5D12-1097.op.pdf

***Silha v. Department of Highway Safety and Motor Vehicles*, ___ So. 3d ___ (Fla. 1st DCA 2013), 38 Fla. L. Weekly D444, February 22, 2013, 1D12-4323**

The defendant appealed an order granting summary judgment in favor of the state, and the district court affirmed. The defendant argued that, "contrary to the trial court's determination, the Department of Highway Safety and Motor Vehicles ("Department") lacked the authority to revoke his Florida driving privilege for four convictions of driving under the influence ("DUI") when he did not have a Florida driver's license, did not reside in Florida, and did not receive the triggering conviction in Florida. [The defendant] was convicted in Florida of a third DUI in 1996. In late 1996, [the defendant] left Florida and was convicted in 1999 of a fourth DUI in Georgia. [The defendant's] Florida driver's license had expired at the time of the Georgia conviction. After receiving notice from the Georgia authorities of the fourth conviction, the Department permanently revoked the defendant's driving privilege effective November 23, 1999, and sent notice to [his] last known address. [The defendant] was extradited to Florida in April 2000 on an outstanding arrest warrant and was in the custody of the Florida Department of Corrections until September 22, 2000. In 2002, [the defendant] obtained an Arkansas driver's license. In 2010, Arkansas authorities refused to renew the defendant's license due to his driving status in Florida. [The defendant], who first learned of the Florida revocation after Arkansas refused to renew his license, sought a declaratory judgment and injunctive relief against the Department." The court held that "if the Department is authorized to revoke a Florida resident's driver's license for having three DUI convictions within Florida and the fourth DUI conviction in another state, then it is authorized to revoke a nonresident's driving privilege under the same scenario."

http://opinions.1dca.org/written/opinions2013/02-22-2013/12-4323.pdf

***Woodbury v. State*, ___ So. 3d ___ (Fla. 2d DCA 2013), 38 Fla. L. Weekly D420, February 22, 2013, 2D11-3215.**

The district court affirmed the trial court upon the defendant's appeal of his conviction for misdemeanor DUI. The defendant argued that "the circuit court did not have subject matter jurisdiction because it previously dismissed the felony DUI" and "that the misdemeanor charge was a nullity because the State filed it after the time for speedy trial expired." The district court held "that the circuit court properly maintained jurisdiction of the lesser included misdemeanor offense. Section 26.012(2)(d), Florida Statutes (2010), gives the circuit court exclusive original jurisdiction of 'all felonies and of all misdemeanors arising out of the same circumstances as a felony which is also charged.'" The district court also held that because it concluded that the circuit court maintained jurisdiction over the lesser-included misdemeanor DUI, "the felony speedy trial time period governs. *See* Fla. R. Crim. P. 3.191(a) (providing that 'every person charged with a crime shall be brought to trial within ... 175 days of arrest if the crime charged is a felony')."
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2013/February/February%2022,%202013/2D11-3215rh.pdf

***Echternach v. Department of Highway Safety and Motor Vehicles*, ___ So. 3d ___ (Fla. 2d DCA 2013), 2013 WL 1136873 March 20, 2013, 2D12-2910.**

The district court denied the defendant's petition for second-tier writ of certiorari. "*See Dep't of Highway Safety & Motor Vehicles v. Robinson*, 93 So. 3d 1090 (Fla. 2d DCA 2012). However, [the district court], as [it] did in *Robinson* and subsequently in *Department of Highway Safety & Motor Vehicles v. Ramnarine*, 104 So. 3d 1144 (Fla. 2d DCA 2012), certified the following question of great public importance to the supreme court pursuant to Florida Rule of Appellate Procedure 9.030(a)(2)(A)(v):"

> *When a suspendee seeks formal review of a driver's license suspension pursuant to section 322.2615(a), Florida Statutes, is it a violation of due process to suspend the license after a subpoenaed witness fails to appear and the suspendee cannot enforce the subpoena within the statutorily mandated thirty-day period for formal administrative review?*

http://www.2dca.org/opinions/Opinion_Pages/Opinion_Pages_2013/March/March%2020,%202013/2D12-2910.pdf

***Florida Department of Highway Safety and Motor Vehicles v. Robinson*, ___ So. 3d ___ (Fla. 2013), 2013 WL 1196592, March 27, 2013, SC12-1874.**

The supreme court declined to extend jurisdiction and denied a petition for review of the following question, certified by the Second District Court of Appeal:

> *When a suspendee seeks formal review of a driver's license suspension pursuant to section 322.2615(a), Florida Statutes, is it a violation of due process to*

*suspend the license after a subpoenaed witness fails to appear and the suspendee cannot enforce the subpoena within the statutorily mandated thirty-day period for formal administrative review?*

http://www.floridasupremecourt.org/decisions/2013/sc12-1874.pdf