

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

ROBERT LOUIS DEES,

Appellant,

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

v.

CASE NO. 1D09-5638

STATE OF FLORIDA,

Appellee.

_____ /

Opinion filed March 2, 2011.

An appeal from the Circuit Court for Escambia County.
W. Joel Boles, Judge.

Nancy A. Daniels, Public Defender, and Terry Carley, Assistant Public Defender,
Tallahassee, for Appellant.

Pamela Jo Bondi, Attorney General, and Joshua R. Heller, Assistant Attorney
General, Tallahassee, for Appellee.

PER CURIAM.

The appellant was convicted of driving while license revoked as a habitual
traffic offender, in violation of section 322.34(5), Florida Statutes (2009) (Count

I); driving while license suspended, revoked or canceled with knowledge, in violation of section 322.34(2)(c), Florida Statutes (2009) (Count II); and driving without a valid license, in violation of section 322.03(1), Florida Statutes (2009) (Count III). All three counts arose out of the same offense. We affirm the appellant's conviction on Count I without discussion. We reverse the appellant's conviction on Count II because Counts I and II are mutually exclusive. See Franklin v. State, 816 So. 2d 1203 (Fla. 4th DCA 2002). We also reverse the appellant's conviction on Count III. Dual convictions on Counts I and III violate double jeopardy because Count III is a necessarily lesser-included offense of Count I. See § 775.021(4)(b)3., Fla. Stat. (2009); Fla. Std. Jury Instr. (Crim.) 28.11(a).

AFFIRMED in part, REVERSED in part, and REMANDED with instructions to vacate the appellant's convictions on Counts II and III and resentence him on Count I.

WOLF, WEBSTER, and ROBERTS, JJ., CONCUR.