

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

DEVONTA JARRELL MAYBERRY,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

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

CASE NO. 1D11-3377

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Opinion filed May 14, 2013.

An appeal from the Circuit Court for Duval County.  
Russell L. Healey, Judge.

Nancy A. Daniels, Public Defender, Ryan Thomas Truskoski, Orlando, for  
Appellant.

Pamela Jo Bondi, Attorney General, Angela R. Hensel and Donna A. Gerace,  
Assistant Attorneys General, Tallahassee, for Appellee.

PER CURIAM.

Appellant appeals his conviction as a principal to attempted armed robbery and second-degree felony murder. Appellant argues that the trial court erred by denying his motion for judgment of acquittal, because the State failed to present sufficient evidence to establish that he was a principal to the crimes. We disagree

and affirm. We agree with Appellant, however, that there was insufficient evidence upon which the jury could find that Appellant *actually possessed* a firearm at the time of the attempted robbery. Consequently, the imposition of the mandatory ten-year minimum sentence the trial court assessed pursuant to section 775.087(2)(a), Florida Statutes, was erroneous. We reverse and remand for resentencing in accordance with this opinion. Appellant need not be present for the resentencing.

AFFIRMED in part, REVERSED in part, and REMANDED with instructions.

VAN NORTWICK, THOMAS, and ROBERTS, JJ., CONCUR.