

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

WILLIAM EDWARD RENO,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

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

CASE NO. 1D12-3163

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Opinion filed September 23, 2013.

An appeal from the Circuit Court for Alachua County.  
Peter K. Sieg, Judge.

Nancy A. Daniels, Public Defender, and M. J. Lord, Assistant Public Defender,  
Tallahassee, for Appellant.

Pamela Jo Bondi, Attorney General, and Angela R. Hensel, Assistant Attorney  
General, Tallahassee, for Appellee.

PER CURIAM.

We reverse Appellant's conviction for attempted second-degree murder because the evidence presented at trial was legally insufficient to establish the "depraved mind" element of that offense. See § 782.04(2), Fla. Stat. (2011) (defining second-degree murder). Of the two lesser-included offenses on which the jury was instructed, the evidence and the jury's verdict were sufficient to establish

only improper exhibition of a firearm. Under the mandatory language of section 924.34, Florida Statutes (2011), we therefore remand this case for the trial court to enter a judgment of conviction for improper exhibition of a firearm and resentence him accordingly. See State v. Sigler, 967 So. 2d 835, 844 (Fla. 2007) (recognizing that section 924.34 applies to a permissive lesser-included offense where the jury's verdict necessarily includes a finding of guilt as to that offense); Festa v. State, 927 So. 2d 1049, 1051-52 (Fla. 4th DCA 2006) (holding that the State does not have a second opportunity to prove a lesser-included offense where the evidence of the greater offense was insufficient at a jury trial and the jury was not instructed on the lesser offense).

REVERSED and REMANDED with instructions.

WOLF, ROBERTS, and RAY, JJ., CONCUR.