

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

JULY TERM 2008

TIMOTHY WILLIAM KONRATH, JR.,

Appellant,

v.

Case No. 5D07-3870

STATE OF FLORIDA,

Appellee.

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Opinion filed January 9, 2009

Appeal from the Circuit Court
for Lake County,
Mark A. Nacke, Judge.

James S. Purdy, Public Defender,
and Henry T. Swann, III and Noel A.
Pelella, Assistant Public Defender,
Daytona Beach, for Appellant.

Bill McCollum, Attorney General,
Tallahassee, and Robin A. Compton,
Assistant Attorney General, Daytona
Beach, for Appellee.

PER CURIAM.

Although the State failed to prove that Timothy Konrath, Jr. committed the crime of aggravated assault with a firearm, all of the elements of the lesser included offense of improper exhibition of a firearm were determined by the jury verdict to have been established. See § 790.10, Fla. Stat. (2006) ("If any person having or carrying any . . . firearm . . . shall, in the presence of one or more persons, exhibit the same in a . . .

threatening manner, not in necessary self-defense, the person so offending shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.093.”). We therefore reverse the conviction for aggravated assault with a firearm and remand to the trial court for entry of a judgment of conviction and for sentencing for the lesser included offense of improper exhibition of a firearm. See Marra v. State, 970 So. 2d 475 (Fla. 5th DCA 2007).

REVERSED and REMANDED with instructions.

GRIFFIN and SAWAYA, JJ., and PLEUS, R., Senior Judge, concur.