

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
**No. 94923**

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**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**PHILLIP MORRIS, III**

DEFENDANT-APPELLANT

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**JUDGMENT:**  
**AFFIRMED**

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Criminal Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CR-531469 B

**BEFORE:** Blackmon, P.J., Boyle, J., and Cooney, J.

**RELEASED AND JOURNALIZED:** February 24, 2011

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PATRICIA ANN BLACKMON, P.J.:

{¶ 1} Appellant Phillip Morris, III (“Morris”) appeals his conviction for having a weapon while under disability and assigns the following two errors for our review:

**“I. The state failed to present sufficient evidence to sustain the conviction.”**

**“II. Appellant’s conviction is against the manifest weight of the evidence.”**

{¶ 2} Having reviewed the record and pertinent law, we affirm Morris’s conviction. The apposite facts follow.

**Facts**

{¶ 3} The state charged Morris with aggravated robbery, aggravated murder, and having a weapon while under disability. The jury returned a verdict of acquittal on the murder and robbery charges, and the trial court found him guilty of having a weapon while under disability, which is the subject of this appeal. Morris challenges the trial court's ruling and the five-year prison sentence.

{¶ 4} During the jury trial, Morris's codefendant, Jermaine Taylor, agreed to testify against Morris in exchange for a plea and sentence deal. According to Taylor, it was Morris's idea to rob Chris Jordan while they obtained marijuana from Jordan. Prior to arriving at Jordan's house, Morris gave Taylor an unloaded .22 caliber gun. While Morris was engaging in the drug transaction with Jordan, Taylor pointed a gun at Jordan and took his backpack containing the drugs.

{¶ 5} Both Taylor and Morris ran out of the room, and Jordan followed them. Taylor described the order; he ran first, Morris followed, and Jordan followed Morris. Jordan was shot in the dark hallway outside the bedroom. Taylor testified that he did not shoot Morris and that Morris must have had a gun and shot Jordan. According to Taylor, Morris had planned the robbery.

{¶ 6} Several witnesses, who were at the house during the incident, testified. They believed Morris and Taylor were together; the drug transaction between Morris and Jordan took place in Jordan's bedroom; Morris and Taylor ran from the room at the same time with Jordan in pursuit; they identified Taylor as the one with the gun; and, they

did not see the shooting because it took place outside the bedroom in a dark hallway. Officers recovered a .380 shell casing from the scene.

{¶ 7} Shakela Jackson testified that on the night in question, Morris and Taylor arrived at her house, which was not far from Jordan's house. They were out of breath and told her that they had just robbed somebody. She stated that when Taylor accused Morris of not helping him, Morris responded that he couldn't help him and that "I didn't even know that it was about to go down like that." Morris stipulated to having a juvenile record for drug possession.

#### Sufficiency of Evidence

{¶ 8} In his first assigned error, Morris argues the state failed to present sufficient evidence to sustain his conviction. Pursuant to R.C. 2923.13(A)(3), the statutory elements for the offense of having a weapon while under disability are no person shall knowingly acquire, have, carry, or use any firearm and have a previous conviction for possession of drugs.

{¶ 9} Morris argues that the state failed to present evidence that he knowingly possessed a weapon; consequently, the trial court should have granted his Crim.R. 29 motion for acquittal. We disagree. When analyzing the sufficiency of the evidence, an appellate court must view the evidence "in the light most favorable to the prosecution," and ask whether "any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *State v. Carter*, 72 Ohio St.3d 545, 1995-Ohio-104, 651 N.E.2d 965; *Jackson v. Virginia* (1979), 443 U.S. 307, 319, 99 S.Ct. 2781, 2789, 61

L.Ed.2d 560; *State v. Jenks* (1991), 61 Ohio St.3d 259, 574 N.E.2d 492, paragraph two of the syllabus. Consequently, the reviewing court ultimately must determine not whether the evidence is to be believed, but whether if believed the evidence against the defendant would support a conviction. *State v. Thompson*, 78 Ohio St.3d 380, 1997-Ohio-52, 678 N.E.2d 541.

{¶ 10} Taylor’s testimony supported Morris’s conviction. He testified that Morris gave him an unloaded .22 caliber gun that was to be used during the robbery. This information coupled with Morris’s stipulation to his prior drug conviction is sufficient to support the conviction. This is not necessarily inconsistent with the jury’s acquitting Morris of murder and robbery. The witnesses at the house testified that Taylor had a .380 caliber gun; additionally a .380 shell was recovered from the scene. The jury could have believed that the original plan was to take Jordan’s drugs and use the unloaded .22 caliber gun to scare Jordan and escape.

{¶ 11} The trial court could have also relied upon the fact that Morris and Taylor ran out of the room together and Shakela Jackson testified that when Taylor accused Morris of not helping him, Morris said he didn’t “think it was going to go down that way.” Consequently, in viewing the evidence in the light most favorable to the state, the facts presented were that Morris had a .22 caliber gun in his possession in violation of having a weapon while under disability law. If this evidence is believed, it would support a conviction. Although the state argued an accomplice theory in support of the weapons charge, the facts are consistent with the trial court’s ruling that Morris had in his

possession a .22 caliber gun, which isolates the weapon while under disability offense from the other offenses.

{¶ 12} Even if the trial court’s conviction is inconsistent with the jury’s acquittal, we find no error. “An appellate court is not permitted to speculate about the reason for the inconsistency when it determines the validity of a verdict.” *State v. Trewartha*, 165 Ohio App.3d 91, 2005-Ohio-5697, 844 N.E.2d 1218, ¶16, discretionary appeal not allowed 108 Ohio St.3d 1475, 2006-Ohio-665, 842 N.E.2d 1054. In criminal cases, consistency between verdicts on several counts of an indictment is unnecessary where the defendant is convicted on one or some counts, and acquitted on others; the conviction will generally be upheld, irrespective of its rational incompatibility with the acquittal. *State v. Woodson* (1985), 24 Ohio App.3d 143, 493 N.E.2d 1018; *State v. Adams* (1978), 53 Ohio St.2d 223, 228, 374 N.E.2d 137. The reason the inconsistency does not matter is because “several counts of an indictment containing more than one count are not interdependent and an inconsistency in a verdict does not arise out of inconsistent responses to different counts, but only arises out of inconsistent responses to the same count.” *State v. Lovejoy*, 79 Ohio St.3d 440, 1997-Ohio-371, 683 N.E.2d 1112, at paragraph one of the syllabus. Accordingly, Morris’s first assigned error is overruled.

#### Manifest Weight of the Evidence

{¶ 13} In *State v. Wilson*, 113 Ohio St.3d 382, 2007-Ohio-2202, 865 N.E.2d 1264, the Ohio Supreme Court addressed the standard of review for a criminal manifest weight challenge, as follows:

**“The criminal manifest-weight-of-the-evidence standard was explained in *State v. Thompkins*, 78 Ohio St.3d 380, 1997-Ohio-52, 678 N.E.2d 541.**

**In *Thompkins*, the court distinguished between sufficiency of the evidence and manifest weight of the evidence, finding that these concepts differ both qualitatively and quantitatively. *Id.* at 386, 678 N.E.2d 541. The court held that sufficiency of the evidence is a test of adequacy as to whether the evidence is legally sufficient to support a verdict as a matter of law, but weight of the evidence addresses the evidence’s effect of inducing belief. *Id.* at 386-387, 678 N.E.2d 541. In other words, a reviewing court asks whose evidence is more persuasive — the state’s or the defendant’s? We went on to hold that although there may be sufficient evidence to support a judgment, it could nevertheless be against the manifest weight of the evidence. *Id.* at 387, 678 N.E.2d 541. ‘When a court of appeals reverses a judgment of a trial court on the basis that the verdict is against the weight of the evidence, the appellate court sits as a “thirteenth juror” and disagrees with the factfinder’s resolution of the conflicting testimony.’ *Id.* at 387, 678 N.E.2d 541, citing *Tibbs v. Florida* (1982), 457 U.S. 31, 42, 102 S.Ct. 2211, 72 L.Ed.2d 652.”**

{¶ 14} The weight of the evidence addresses the effect of the evidence in inducing belief. The reviewing court reviews whether the state’s evidence is more persuasive. We decline to reverse the trial judge’s determination that Morris possessed a weapon while under disability. Morris argues that the trial court lost its way in resolving the conflicting evidence and should have followed the jury’s decision that Morris was not guilty of murder and robbery. As we discussed in the first assigned error, both the jury’s and trial court’s interpretations of the evidence are reasonable.

{¶ 15} The trial court heard consistent evidence that Taylor had a .380 silver gun and that Jordan was shot by a .380 gun. Taylor stated Morris gave him an unloaded .22 caliber gun. Morris told Jackson that he didn’t know that the robbery was going to end in a shooting, which is consistent with his providing Taylor with an unloaded gun.

{¶ 16} Regardless of whether the jury believed Taylor, the trial court at least believed Taylor’s testimony that Morris had a gun and gave it to him. This possession by Morris is enough to convict him of having a weapon while under disability. Accordingly, we overrule Morris’s second assigned error.

Judgment affirmed.

It is ordered that appellee recover of appellant its costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution. The defendant’s conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

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PATRICIA ANN BLACKMON, PRESIDING JUDGE

MARY J. BOYLE, J., and  
COLLEEN CONWAY COONEY, J., CONCUR