

**IN THE COURT OF APPEALS  
FIRST APPELLATE DISTRICT OF OHIO  
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-070783
	:	TRIAL NO. B-0703218
Plaintiff-Appellee,	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
	:	
STANLEY JOINER,	:	
	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.<sup>1</sup>

Stanley Joiner appeals his conviction and sentence for burglary. We affirm.

***I. Burglary***

James Wilson was parking his car in his apartment parking lot one night when he saw a woman standing there, looking through bags. When he got out of his car, the woman began to make loud whooping noises.

When Wilson entered his apartment, he heard noises coming from the back. He looked out a back window and saw a man wearing a green jacket walking out of the building, with a duffle bag over his shoulder. The man was joined by the woman who had been standing out front.

Wilson ran after the pair. The man turned around several times—Wilson was able to clearly see his face. Wilson also saw that an item belonging to him was in the duffle bag carried by the man. Wilson followed the pair to the edge of a wooded area

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<sup>1</sup> See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

and called the police. Officer James Pike stationed himself on the other edge of the wooded area. Eventually, Joiner exited from the woods, wearing a green jacket. Joiner first told Pike he had been at a party. Then he changed his story and told him that he had been at his mother's house.

Officer Timothy Pappas testified that he and his police tracking dog, Laser, had been called to the scene. The dog had picked up a scent where the pair had entered the woods. Laser tracked the scent to the other edge of the wooded area. Shortly after Joiner had exited from the area, and while Joiner was speaking to Pike, Laser exited from the wooded area in the same place that Joiner had exited. Pike immediately put Joiner in a police car—Laser followed Joiner's scent to the police car.

Pike drove Joiner to Wilson's apartment. Wilson immediately identified Joiner as the man he had been following.

The jury found Joiner guilty of burglary.<sup>2</sup> He was sentenced to seven years in prison.

On appeal, Joiner argues that (1) he was denied the effective assistance of counsel, and (2) Joiner's conviction was not supported by sufficient evidence and was against the manifest weight of the evidence.

## ***II. Ineffective Assistance of Counsel***

For Joiner to get a new trial because of ineffective assistance of counsel, he would have to show that his attorney's performance fell below an objective standard of reasonable representation and that, but for that performance, a reasonable probability exists that Joiner would have been found not guilty.<sup>3</sup>

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<sup>2</sup> R.C. 2911.12(A)(2).

<sup>3</sup> *Strickland v. Washington* (1984), 466 U.S. 668, 692, 104 S.Ct. 2052.

Joiner argues that his attorney should have used a challenge for cause or a preemptory challenge on a juror who was a retired police officer, allowed Joiner to testify, and arranged for a lineup.

A defendant cannot succeed on an ineffective-assistance-of-counsel claim over a disagreement about trial strategy.<sup>4</sup> In this case, the officer clearly stated that he could be fair and impartial. Joiner's attorney was able to gauge the officer's credibility, and he acted reasonably in accepting that the juror was truthful. Vague speculation about this juror's perceived prejudices is not enough to succeed on an ineffective-assistance claim.

Furthermore, in his brief, Joiner contends, with no supporting authority, that his trial attorney's failure to demand a lineup was clearly below an objective standard of reasonableness. Not so. Not demanding a lineup does not equate with ineffective assistance.

Finally, the record does not reflect that Joiner wished to testify. Joiner's ineffective-assistance-of-counsel assignment of error is overruled.

### ***III. Sufficiency and Weight of the Evidence***

To determine if Joiner's conviction was supported by sufficient evidence, this court views the evidence in a light most favorable to the prosecution and determines whether any rational jury could have found that the essential elements of burglary had been proved beyond a reasonable doubt.<sup>5</sup> When reviewing the manifest weight of the evidence, we review the record, weigh the evidence, consider the credibility of the witnesses, and determine whether the jury clearly lost its way and created a manifest miscarriage of justice.<sup>6</sup>

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<sup>4</sup> *State v. Brown*, 115 Ohio St.3d 5, 2007-Ohio-4837, 873 N.E.2d 858, at ¶153.

<sup>5</sup> *State v. Traore*, 1st Dist. No. C-060802, 2007-Ohio-6334, at ¶12.

<sup>6</sup> *Id.*

The state had to prove beyond a reasonable doubt that Joiner had trespassed in an occupied structure that was the permanent or temporary habitation of another person, when another person was present or was likely to be present, with the purpose of committing any criminal offense.<sup>7</sup>

The state offered enough evidence to prove its case, and the conviction did not result in a miscarriage of justice. Wilson saw Joiner's accomplice, heard her warn Joiner, saw Joiner and his accomplice leave the building, saw Joiner carrying a bag with his possessions, and identified him after he was captured. The trained police tracking dog tracked Joiner directly to the police car. Joiner changed his story when speaking to police. The state proved that Joiner was guilty of burglary beyond a reasonable doubt.

Therefore, we affirm the trial court's judgment.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

**SUNDERMANN, P.J., PAINTER and DINKELACKER, JJ.**

*To the Clerk:*

Enter upon the Journal of the Court on November 26, 2008

per order of the Court \_\_\_\_\_  
Presiding Judge

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<sup>7</sup> R.C. 2911.12(A)(2).