

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

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| STATE OF OHIO, | : | APPEAL NO. C-080063 |
| | : | TRIAL NO. B-0707755 |
| Plaintiff-Appellee, | : | |
| | : | <i>JUDGMENT ENTRY.</i> |
| vs. | : | |
| ROGER JONES, | : | |
| Defendant-Appellant. | : | |

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

Roger Jones appeals his conviction for aggravated burglary. We conclude that his sole assignment of error has no merit, so we affirm the judgment of the trial court.

Jones was indicted for aggravated burglary in violation of R.C. 2911.11(A)(1). During the trial before a jury, Jennifer Cox testified that, on September 5, 2007, she had been in an apartment that she shared with Tawanda Durham. According to Cox, around 10:00 p.m. that night, a man entered the apartment through a door that had been left partly open. The man was holding what appeared to be a silver gun. Cox testified that the man had had a shirt wrapped around his head, but that his forehead, eyes, and part of his nose had been visible. Cox recognized the man as Jones, whom she had met through Durham. She also recognized his shoes, because he wore them every day. When the man entered the apartment, Cox laid on the floor of the bathroom, covered her head, and asked the man not to shoot her. According to Cox, the man repeatedly asked, “Why shouldn’t I?” Cox testified that the man had taken her wallet, some of her personal papers, and her cellular phone.

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

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Detective Excell Walker testified that Cox had identified Jones in a photograph array. The police arrested Jones based on Cox's identification. A pellet gun that had a silver part was recovered from Jones's apartment after he had been arrested.

Raynisha Jones, Roger Jones's fiancée, and Dwayne Robinson, Raynisha's uncle, testified that they had been with Jones around 10:00 p.m. on the night of the burglary. Jones testified in his own defense that, on September 5, he had been in his apartment with Raynisha and Robinson from 10:00 p.m. to 10:30 p.m.

At the conclusion of the trial, the jury found Jones guilty as charged. The trial court sentenced Jones to five years in prison.

In his sole assignment of error, Jones asserts that his conviction was based on insufficient evidence, and that it was against the manifest weight of the evidence. When an appellant challenges the sufficiency of evidence, we must determine whether the state presented adequate evidence on each element of the offense.² On the other hand, when reviewing whether a judgment is against the manifest weight of the evidence, we must determine whether the trier of fact clearly lost its way and created a manifest miscarriage of justice.³

After reviewing the record, we conclude that the state presented sufficient evidence on each of the elements of aggravated burglary. And the jury's finding of guilt was not against the manifest weight of the evidence. The jury was in the best position to determine the credibility of Cox and Jones's alibi witnesses. The sole assignment of error is without merit, and we therefore affirm the judgment of the trial court.

SUNDERMANN, P.J., PAINTER AND HENDON, JJ.

To the Clerk:

Enter upon the Journal of the Court on October 8, 2008

per order of the Court _____.

Presiding Judge

² See *State v. Thompkins*, 78 Ohio St.3d 380, 386, 1997-Ohio-52, 678 N.E.2d 541.

³ See *id.* at 387.