

ARKANSAS COURT OF APPEALS

DIVISION I
No. CACR11-648

HARRY LEE PORTER

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered February 15, 2012

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT,
FOURTH DIVISION,
[NO. CR-2010-1521]

HONORABLE HERBERT WRIGHT,
JUDGE

AFFIRMED

JOHN MAUZY PITTMAN, Judge

Appellant was tried in Pulaski County Circuit Court on a number of criminal charges arising out of a shootout with Little Rock police officers attempting to serve a warrant at appellant's apartment, where appellant was selling cocaine. After a jury trial, appellant was found to have employed a firearm to commit one count of attempted capital murder and two counts of first-degree battery. Appellant was also found guilty of one count of simultaneous possession of drugs and firearms; one count of felony manslaughter; one count of possession of cocaine with intent to deliver; one count of possession of drug paraphernalia with intent to use; one count of maintaining a drug premises; and one misdemeanor count of possession of marijuana. Appellant was sentenced to consecutive terms of imprisonment totaling 309 years. The only conviction challenged on appeal is that for manslaughter, which appellant contends is not supported by substantial evidence. We affirm.



Appellant was charged with having committed manslaughter as defined in Ark. Code Ann. § 5-10-104(a)(B)(2) (Supp. 2011). That section provides that a person commits manslaughter if, in the course of committing a felony or fleeing from the scene thereof, another person who is resisting the felony or flight causes the death of any person. In determining the sufficiency of the evidence to support a criminal conviction, we view the evidence in the light most favorable to the State, considering only the proof that supports the finding of guilt. *Warren v. State*, 2010 Ark. App. 226. We will affirm if there is substantial evidence to support the decision of the fact-finder. *Id.* Substantial evidence is evidence that is of sufficient force and character that it will, with reasonable certainty, compel a conclusion one way or another. *Id.* Circumstantial evidence may constitute substantial evidence to support a conviction if the evidence excludes every other reasonable hypothesis than that of the guilt of the accused. *Flowers v. State*, 373 Ark. 127, 282 S.W.3d 767 (2008). The question of whether the circumstantial evidence excludes every other reasonable hypothesis consistent with innocence is for the jury to decide; on review, we must determine whether the jury resorted to speculation and conjecture in reaching its verdict. *Id.*

Detective Chris Littleton of the Little Rock Police Department testified that he obtained a no-knock, nighttime search warrant to search an upstairs residence at 2200 Marshall Street for evidence of narcotics trafficking. The warrant was executed with the help of a SWAT team at daybreak on March 26, 2010. He heard shots fired as soon as the SWAT team hit the door and announced that they were police executing a search warrant. The police returned fire. Two police officers were shot, and two persons inside the residence were



shot. The detective testified that one of the people shot in the residence was Irma Rogers, who was dead on arrival at the hospital. Crack cocaine, drug paraphernalia, money, and firearms were found when the apartment was searched.

Officer Chance Ketzscher testified that he was a member of the Little Rock Police Department SWAT team and that during the search his primary weapon was a submachine gun holding fifty small-caliber 5.7 x 28mm rounds. He testified that, as he prepared to breach the door, he was seen by a woman who then ran into the apartment yelling, causing the police to lose the element of surprise. Officer Ketzscher was shot immediately after breaching the door and never entered the apartment. Four shots were fired before he was hit. The officer saw a man sitting in a chair about fifteen feet inside the residence whom he believed to be the person who had shot him.

Another SWAT officer, James Jenkins, testified that he was immediately behind Officer Ketzscher and was the first to enter the residence. He heard several rounds being fired before he, too, was shot. Turning to his right, he identified the shooter as appellant before he was shot again. Officer Jenkins returned fire with his .40 caliber Glock service pistol and attempted to get to a covered position where he could assess his injuries. As he did so, he saw a woman in the kitchen, holding her head and covering her face. The woman did not have a weapon. The rest of the SWAT team was already in the residence, so Officer Jenkins left the residence to find the medic attached to the team.

Tamela Hayman testified that she was at the residence buying crack cocaine from appellant when the officers were shot. She said that appellant was wearing a weapon at his



side and that she saw him shooting at the police. She stated that other people were also there to buy narcotics, including a lady she knew by the street name “Fat Cat.”

Officer Kevin Duncan testified that he was also a member of the SWAT team and that he was the third person through the door. His primary weapon was a P-90 submachine gun firing a 5.7mm round. He heard shots as he entered; after Officers Ketzscher and Jenkins were hit, he returned fire, aiming at the muzzle flashes of the shooter’s gun. He testified that he could not see the shooter clearly. Officer Elliot Young testified that he was part of the SWAT team and that he, too, entered the residence. Shots were coming at him as he entered, and he could not immediately tell who was shooting at him. He entered the residence quickly and took cover behind a refrigerator. From this position, he identified appellant as the person shooting at him and returned fire with his P-90 submachine gun. He testified that he saw an unarmed woman in the kitchen. Officer Heath Atkinson, also a member of the SWAT team, ultimately apprehended appellant and Tamela Hayman hiding in the closet of a rear bedroom. He also found an automatic pistol in a sack of clothes next to the closet.

Dr. Stephen Erickson, Deputy Chief Medical Examiner at the Arkansas State Crime Lab, testified that on March 29 he performed an autopsy on Irma Rogers and determined that she died from a gunshot wound to the head. The projectile entered the top of her head as if she were ducking down when she was shot. A toxicology report showed that Irma Rogers had cocaine, but no other drugs, in her system at the time of her death. Dr. Erickson testified that the bullet was retrieved from the victim’s skull and forwarded to the Firearms and Tool



Cite as 2012 Ark. App. 139

Marks section of the Crime Lab. Zack Elder, a firearm and tool-mark examiner at the State Crime Lab, testified that he examined the bullet recovered from the head of Irma Rogers and determined that it was fired from a submachine gun.

Appellant asserts that there was insufficient proof to show that a woman named Irma Rogers was shot by the police in his apartment during the shootout because, although Tamela Hayman testified that a woman called “Fat Cat” was shot in the apartment, she did not know “Fat Cat’s” real name. However, Detective Chris Littleton testified without objection that Irma Rogers was shot and killed in the residence. In light of his testimony and the other evidence set out above, we hold that appellant’s manslaughter conviction is supported by substantial evidence.

Affirmed.

ROBBINS and GLOVER, JJ., agree.

Clint Miller and Brandy Turner, Deputy Public Defenders, for appellant.

Dustin McDaniel, Att’y Gen., by: *Laura Shue*, Ass’t Att’y Gen., for appellee.