

ARKANSAS COURT OF APPEALS

DIVISION II
No. CACR 09-1271

THEOTIS THORNTON

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered September 1, 2010

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT
[NO. CR-07-4812]

HONORABLE HERBERT WRIGHT,
JUDGE

AFFIRMED

COURTNEY HUDSON HENRY, Judge

A jury in Pulaski County found appellant Theotis Thornton guilty of aggravated residential burglary and fixed his sentence at thirty years in prison. The jury also found that appellant used a firearm during the commission of the offense and enhanced this sentence by fifteen years in accordance with Arkansas Code Annotated section 16-90-120 (Supp. 2009). Appellant's sole argument for reversal is that the circumstantial evidence does not prove that he committed the offense. We affirm.

The record reflects that Shalonda Jordan and her two children shared a townhouse apartment on Markham Street in Little Rock with her fiancé, Frenchie Branscomb. At approximately 2:38 a.m. on the morning of October 15, 2007, Jordan and Branscomb were awakened by a loud noise coming from downstairs. Branscomb grabbed a Taurus .45-long Colt/.410 handgun and went to investigate. As he descended the stairs, he saw in the kitchen

a large man wearing a hoodie and a bandana that obscured the man's face. As the intruder approached, Branscomb leaned over the rail, fired a shot, and then ran back upstairs. Jordan, who heard two shots, summoned the police. She testified that nothing was missing from the apartment but that the intruder had rummaged through the kitchen.

When the police arrived, they discovered that the frame to the front door was splintered and that the door had been forced open. Mickey Holloway, a crime-scene specialist, took photographs of two large shoe prints that had been left on the front door. He also removed a .38-caliber full-metal-jacket slug from the wall on the stairwell where Branscomb had been standing. He found no blood at the scene and lifted no fingerprints other than those that belonged to the occupants of the apartment. The police also took custody of Branscomb's handgun that was loaded with both .45-long shells and .410 shells. The spent hull of a .45 shell was in the cylinder. Because he was a convicted felon, Branscomb feared the repercussions of having possessed and fired a handgun, and initially he did not inform the police that he had shot the intruder. Upon questioning by the police, he admitted that he had fired the weapon and he showed them where he had hidden the weapon outside the apartment.

Meanwhile, at approximately 2:41 a.m. on the same date, James Julian, an officer with the UAMS Police Department, received a dispatch alerting him to a car that was driving erratically toward the emergency room. While Julian was en route, he heard another report of a dark sedan occupied by a person with a possible gunshot wound. Julian found a car that

matched this description located partially inside a parking space near the emergency room, and he learned that this car had dropped off a gunshot victim. He felt the hood of the car and found that it was warm to the touch, and he secured it until the arrival of officers from the Little Rock Police Department.

Detective John Stafford responded to the emergency room and identified appellant as the gunshot victim, who was in serious condition. Appellant had been shot in the area of the right shoulder, and the doctor initially had difficulty locating the slug in appellant's body. Stafford spoke with an officer who was at Jordan and Branscomb's townhouse and learned that the shot had been fired from an elevated position. With that information, the doctor located the slug that had lodged in the area of appellant's left hip. Stafford took possession of appellant's clothing and tennis shoes. Officer Alvin Jackson recovered the slug that the doctors removed from appellant's body.

Sergeant Eric Hinsley testified that appellant was six feet tall and weighed 250 pounds. He also determined that appellant lived at 1614 South Martin Street. Hinsley estimated that, at two o'clock in the morning, it would take approximately five minutes to travel from the townhouse to appellant's home and another five minutes to drive from appellant's home to the UAMS emergency room.

The vehicle parked near the emergency room was a dark green 1997 four-door Saturn that was registered to appellant's girlfriend. On the front passenger seat, Officer Holloway found a Charter Arms .38-special revolver that contained one spent round and four live

rounds. All of the bullets were of the full-metal-jacket variety. He also found a pair of gloves, six new bandanas, and two bandanas that appeared to have been worn. In addition, Holloway found a bag of green vegetable material from the floorboard on the passenger side of the vehicle. He swabbed the driver's seat and the worn bandanas for DNA and also lifted fingerprints from the vehicle and items inside the vehicle.

Forensically, the testimony disclosed that the .38-caliber slug removed from the wall of the townhouse was fired from the .38-special handgun found in the Saturn. The slug removed from appellant's body was a .45 caliber. The slug was damaged and could not be ballistically matched to rounds fired from Branscomb's handgun. Appellant's fingerprints were found on the exterior of the Saturn and on a cigar box and beer can located inside the vehicle. Appellant's DNA was found on both of the worn bandanas. The swabs of the driver's seat of the Saturn revealed a mixture of DNA from different persons, and the results were thus inconclusive. The shoes worn by appellant that were recovered from the hospital matched the shoe prints observed on the front door of the townhouse.

Appellant testified that he left his home on South Martin at approximately 2:20 a.m. after speaking with his father and his girlfriend. He said that he was on his way to a friend's house to play video games and that he was shot while walking down Valentine Street. Appellant stated that he lost consciousness after he was shot and that his first memory afterwards was that of waking up in the hospital. Appellant's father, Thomas Thornton, testified that appellant told him that he was leaving the house to get a phone. Daria Morris,

appellant's girlfriend, testified that appellant said that he was going to another home owned by Thomas Thornton on South Martin and that she fussed at him about leaving.

Appellant's argument on appeal is that the circumstantial evidence is not sufficient to support his conviction. A person commits residential burglary if he enters or remains unlawfully in a residential occupiable structure of another person with the purpose of committing any offense punishable by imprisonment. Ark. Code Ann. § 5-39-201(a)(1) (Repl. 2006). A person commits the offense of aggravated residential burglary if he commits residential burglary and is armed with a deadly weapon or inflicts or attempts to inflict death or serious physical injury upon another person. Ark. Code Ann. § 5-39-204(a)(1) & (2) (Supp. 2009).

When a defendant challenges the sufficiency of the evidence that led to a conviction, the evidence is viewed in the light most favorable to the State. *Gamble v. State*, 351 Ark. 541, 95 S.W.3d 755 (2003). Only evidence supporting the verdict will be considered. *Sales v. State*, 374 Ark. 222, 289 S.W.3d 423 (2008). The test for determining the sufficiency of the evidence is whether the verdict is supported by substantial evidence, direct or circumstantial. *Britt v. State*, 83 Ark. App. 117, 118 S.W.3d 140 (2003). Substantial evidence is evidence that is of sufficient force and character that it will, with reasonable certainty, compel a conclusion one way or another. *Strong v. State*, 372 Ark. 404, 277 S.W.3d 159 (2008). Circumstantial evidence may constitute sufficient evidence to support a conviction, but it must exclude every other reasonable hypothesis other than the guilt of the accused. *Whitt v. State*, 365 Ark. 580,

232 S.W.3d 459 (2006). The question of whether the circumstantial evidence excludes every other reasonable hypothesis consistent with innocence is for the trier of fact to decide. *Id.*

When the evidence is viewed in the light most favorable to the State, the record shows that Branscomb shot an intruder who was wearing a bandana sometime after 2:30 a.m. on the morning of October 15, 2007. Appellant appeared at an emergency room a short time later with a gunshot wound. The trajectory of the bullet as it traveled through appellant's body was consistent with the shot having been fired from above, as described by Branscomb. A .45-caliber slug was removed from appellant's body, and the spent shell casing found in Branscomb's handgun was a .45-caliber round. The .38-caliber slug removed from the stairwell of the townhouse was fired from the weapon seized from the vehicle of appellant's girlfriend, and this vehicle was parked at the emergency room of the hospital where appellant was treated. Appellant's fingerprints were found on the exterior of the vehicle and on items found inside the vehicle. Appellant's DNA was found on two bandanas discovered in the vehicle. Finally, appellant's shoe prints matched those found on the front door of the townhouse. Based on the record, we are satisfied that substantial evidence supports the jury's verdict. Accordingly, we affirm appellant's conviction.

Affirmed.

HART and GLOVER, JJ., agree.