

ARKANSAS COURT OF APPEALSDIVISION IV
No. CACR12-80SHAWN TREVELL RAINER
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE**Opinion Delivered** October 24, 2012APPEAL FROM THE MISSISSIPPI
COUNTY CIRCUIT COURT,
CHICKASAWBA DISTRICT
[NO. CR 2009-193]HONORABLE JOHN N. FOGLEMAN,
JUDGE

AFFIRMED

RITA W. GRUBER, Judge

Shawn Trevell Rainer was charged with first-degree murder for purposely causing the death of Takina Douglas, who was stabbed with a kitchen knife. Rainer moved for a directed verdict at his jury trial, arguing that circumstantial evidence presented by the State was not sufficient to sustain a conviction for first-degree murder or the lesser-included offense, second-degree murder. The court denied the motion, finding the evidence sufficient to go to the jury. Rainer was found guilty of second-degree murder and was sentenced as a habitual offender to eighty years' imprisonment. He subsequently filed a motion for new trial, which the circuit court also denied. He now appeals his conviction, contending that the State's evidence was insufficient to support the verdict because it was circumstantial. We affirm.

Rainer argues on appeal, as he did below, that the State's circumstantial evidence failed to exclude every reasonable hypothesis other than his guilt. The State counters that it

presented both circumstantial and direct evidence constituting sufficient evidence to support the verdict. This evidence includes a recording of a 911 telephone call—allegedly made by Douglas in her apartment bedroom—and of police-radio traffic; testimony by responding police officers about their observations and actions in the apartment; officers’ testimony about what Rainer said at the scene and afterward; testimony by the medical examiner, a forensic DNA analyst, and a fingerprint analyst; and photographs depicting Douglas’s injuries, injuries to Rainer, and blood throughout the apartment.

An audio CD of the 911 call and radio traffic was played for the jury, and the CD itself was introduced into evidence. As the State points out on appeal, the jury was not provided a transcript of the call and no transcript was introduced into evidence. The addendum of Rainer’s brief includes—with no reference to the record—a typed transcript of the 911 call with a key identifying the voices of the victim, Rainer, the 911 dispatcher, paramedics, and police officers. The abstract portion of Rainer’s brief merely reprints the transcript that appears in the addendum. Both Rainer and the State refer to the 911 call in the argument portions of their briefs.

We will not consider the contents of the 911 call because the record lacks a verbatim record of the call as it was played to the jury and because the call is not properly abstracted. See *Dillard v. State*, 2012 Ark. App. 503; *Wright v. State*, 2011 Ark. App. 729 (remanding in each case to settle and supplement the record, and ordering rebriefing). “Unless waived on the record by the parties, it shall be the duty of any circuit court to require that a verbatim record be made of all proceedings . . . pertaining to any contested matter before the court or

the jury.” Ark. Sup. Ct. Admin. Order No. 4(a) (2012). The burden is on the appealing party to provide both a record and an abstract sufficient to demonstrate error for appellate review. *McGehee v. State*, 344 Ark. 602, 43 S.W.3d 125 (2001) (citing Ark. Sup. Ct. R. 4-2).

A challenge to the sufficiency of the evidence asserts that the verdict was not supported by substantial evidence. *Sales v. State*, 374 Ark. 222, 289 S.W.3d 423 (2008). Circumstantial evidence, in order to be substantial and to support a conviction, must exclude every other reasonable hypothesis than that of the guilt of the accused; the question is for the jury to decide. *Id.* On review, the appellate court must determine whether the jury resorted to speculation and conjecture in reaching a verdict. *Id.* The evidence is reviewed on appeal in the light most favorable to the State, and only the evidence that supports the verdict is considered. *Id.*

Here, we are able to address the sufficiency arguments from evidence other than the contents of the 911 call. The State’s witnesses included law enforcement officers who responded to the 911 call, received at 8:25 p.m. on June 14, 2009. According to their testimony, officers and medics arrived to a “chaotic” scene. Lt. Jeremy Ward of the Blytheville Police Department—who was a sergeant on that date—was a few blocks from the apartment and was the first to arrive, but he was assisted within minutes by other officers. Rainer was covered in blood and was frantically asking for help for his girlfriend. He met Ward at the front door and directed him down the hallway to the back of the apartment. There was a trail of blood leading to the bedroom, and a long telephone cord was at its entry. A knife lay in the bedroom doorway. Douglas—covered in blood and coughing up

blood—was sitting on the bedside. She collapsed onto the floor; Rainer put his arms around her upper body and rocked her. Officers removed him from the room so that aid could be rendered to the victim.

Sergeant Vanessa Johnson Stewart of the Blytheville police got on the floor with Douglas and asked who had stabbed her, but blood was coming from her mouth and she was gasping for air. Stewart asked her to blink if Rainer had done it and, not knowing the victim's name, asked, "Baby, can you hear me?" Douglas's only response was a weak "huh." Her breathing stopped twenty seconds later. Medics had arrived by then. They began CPR while Rainer screamed for help for his "baby."

Commander Scott Adams of the department's Criminal Investigation Division, a lieutenant detective at the time of the crime, testified that he took photographs at the hospital and then at the crime scene. His testimony and the photographs, admitted into evidence, depicted the blood trail from the front door to the back of the apartment and blood spatter that was around the area of the front door, on the living room carpet and walls, in the kitchen and dining area, and on the hallway carpet, doors, and walls. The bedroom floor and mattress were soaked in blood.

The medical examiner, Dr. Stephen A. Erickson, testified that the victim died as a result of a five-inch stab wound that entered her right-chest cavity beside the breast, just under the arm, cutting the pulmonary artery and injuring the right lung. He said the direction and twist of the blade, as well as the location of the wound, were not consistent with a trip and fall. He acknowledged that her blood-alcohol level was 0.16. Wes Sossamon, a

latent-print analyst at the state crime laboratory, said that there were two prints on the knife blade; one was unidentified and the other was of Rainer's right thumb. Mary Simonson, a forensic DNA analyst, testified that blood samples from the front room were from the victim and that blood on the knife was from both Rainer and the victim.

Finally, Det. Lassley testified that he interviewed Rainer in detention after the stabbing. Lassley testified that Rainer said that the couple had been fighting. According to the detective, Rainer related the following version of events. Rainer gathered his clothes and moved them toward the front door, and Douglas grabbed a knife. She "took off running down the hall," tripped on the phone cord, and fell on the knife. She got up from the floor and told him she was stabbed, but he did not believe her at first because he initially did not see blood on the knife. When she again said she was stabbed, he grabbed her from behind, put his hand over her wound, took her to the bedroom, and had her call 911. Rainer declined to give a recorded statement.

The weighing of evidence and witness credibility are matters left solely to the discretion of the jury. *Wyles v. State*, 368 Ark. 646, 249 S.W.3d 782 (2007). Reviewing the evidence in the light most favorable to the State, and deferring matters of credibility and weight to the jury, we conclude in the present case that the jury could have reached its verdict without resorting to speculation and conjecture. There were multiple signs of a violent fight, including blood spatters throughout the apartment and a trail of blood from the front door to the bedroom; Rainer's thumb print was on the murder weapon; the location of Douglas's fatal wound was inconsistent with a trip and fall; and the victim herself—rather

than Rainer—called 911 for help.

We hold that this evidence is sufficient to affirm a finding that Rainer, with the purpose of causing serious physical injury to Douglas, caused her death. *See* Ark. Code Ann. § 5-10-103(a)(2) (Repl. 2006). Therefore, the conviction is affirmed.

Affirmed.

GLADWIN and GLOVER, JJ., agree.

Dan Hancock, Deputy Public Defender, by: *Clint Miller*, Deputy Public Defender, for appellant.

Dustin McDaniel, Att’y Gen., by: *Kathryn Henry*, Ass’t Att’y Gen., for appellee.