

## ARKANSAS COURT OF APPEALS

DIVISION IV  
No. CA10-1245

IN RE GAUCHA-IGA 12 GAUGE,  
SER# 363457, BENELLI 12 GAUGE,  
SER# Z291509, TRADITIONS .50  
CAL., SER# 14-13-005451-08,  
VANGUARD 7MM RIFLE, SER#  
VS3737, RUGER 10/22, SER#249-07007

**Opinion Delivered** October 5, 2011

APPEAL FROM THE DREW  
COUNTY CIRCUIT COURT  
[CV-2009-137-1]

HONORABLE SAM POPE, JUDGE

AFFIRMED

---

**DAVID M. GLOVER, Judge**

This case involves a civil-forfeiture action filed by the State pursuant to Arkansas Code Annotated section 5-64-505. In the search of a house conducted on June 12, 2009, the Tenth Judicial District Drug Task Force found several items connected with the manufacture of methamphetamine. In addition, they recovered several firearms from the premises. In his answer to the forfeiture complaint, Thomas Smith, Jr., affirmatively answered that he was not the owner of the seized property.<sup>1</sup> On March 8, 2010, the trial court held a joint hearing on the forfeiture action and on Thomas's motion to suppress evidence in his criminal case. The

---

<sup>1</sup>On the same date that Thomas Smith, Jr., filed his answer, his mother, Jane Smith, filed a document styled, "Intervenor/Claimant's Answer to Forfeiture Complaint," and another one styled, "Motion to Return Seized Property." In them, she claimed either individual or co-ownership of the items. The trial court determined that Thomas was the owner of the property, and no notice of appeal was filed by the mother.



Cite as 2011 Ark. App. 591

trial court determined that Thomas owned the firearms and that forfeiture of them was proper under the statute. We affirm.

In this appeal, Thomas contends that none of the firearms seized in this action were found in his actual possession, and that even if he did have access to them, the State introduced absolutely no evidence that any of the firearms were involved in an exchange for a controlled or counterfeit substance. He further contends that the guns belonged to his parents and were used in connection with his parents' hunting camp where the guns were kept.

A forfeiture action is an *in rem* civil proceeding that is independent of any criminal charges and is decided by a preponderance of the evidence. *State v. 26 Gaming Machines*, 356 Ark. 47, 145 S.W.3d 368 (2004). We will not set aside a trial court's decision to grant a forfeiture unless it is clearly erroneous, *i.e.*, unless we are left with a definite and firm conviction, after reviewing all of the evidence, that a mistake has been committed. *Id.*

First, as noted by the State, the arguments Thomas now makes were not developed at the forfeiture/suppression hearing. Although Thomas and his mother testified at the hearing concerning the mother's alleged ownership of the guns and the use of the house as a hunting camp, the actual arguments presented in this appeal were not raised. We nevertheless address them because they constitute challenges to the sufficiency of the evidence supporting the forfeiture, and the failure to raise them in a bench trial does not prevent them from being heard on appeal. *\$15,956 in U.S. Currency v. State*, 366 Ark. 70, 233 S.W.3d 598 (2006).



Cite as 2011 Ark. App. 591

Arkansas Code Annotated section 5-64-505 (Supp. 2011) provides in pertinent part:

(a) ITEMS SUBJECT TO FORFEITURE. The following are subject to forfeiture upon the initiation of a civil proceeding filed by the prosecuting attorney and when so ordered by the circuit court in accordance with this section, however no property is subject to forfeiture based solely upon a misdemeanor possession of a Schedule III, Schedule IV, Schedule V, or Schedule VI controlled substance:

. . . .

(6)(A) Anything of value, including firearms, furnished or intended to be furnished in exchange for a controlled substance or counterfeit substance in violation of this chapter, any proceeds or profits traceable to the exchange, and any money, negotiable instrument, or security used, or intended to be used, to facilitate any violation of this chapter.

(B) However, no property shall be forfeited under this subdivision (a)(6) to the extent of the interest of an owner by reason of any act or omission established by him or her, by a preponderance of the evidence, to have been committed or omitted without his or her knowledge or consent;

(7) REBUTTABLE PRESUMPTIONS.

(A) *Any money, coin, currency, or firearms found in close proximity to a forfeitable controlled substance, a counterfeit substance, forfeitable drug manufacturing or distributing paraphernalia, or a forfeitable record of an importation, manufacture, or distribution of a controlled substance or counterfeit substance is presumed to be forfeitable under this subdivision (a)(7).*

(B) *The burden of proof is upon a claimant of the property to rebut this presumption by a preponderance of the evidence[.]*

(Emphasis added.)

In *Limon v. State*, 285 Ark. 166, 168, 685 S.W.2d 515, 516–17 (1985), our supreme court explained: “‘In close proximity’ simply means ‘very near.’ For that reason it has been said that the meaning of the term in such a statute is to be determined on a case-by-case basis.



Cite as 2011 Ark. App. 591

We agree with that approach and do not mean by this opinion to suggest rigid rules for fixing ‘close proximity’ by a particular number of feet, by reference to particular rooms, or by any rule of thumb.” (Citations omitted.)

Here, the officers of the drug task force executed a search warrant at a two-bedroom house where they had knowledge Thomas lived. They found items related to the manufacture of methamphetamine throughout the house. They also found three firearms in the living room and two firearms in a bedroom, which also contained clothing and other items belonging to Thomas. The guns in the bedroom were leaning against the headboard beside the bed. Several bags of iodine were found in the bedroom closet. In a drawer, there were several small Ziploc baggies, which the officers explained are commonly used for packaging and selling methamphetamine. On the floor of a nearby bathroom, the officers found the top to an HCL generator next to an iodine-stained shirt and a homemade name tag with Thomas’s name on it and referencing organic chemistry. In the kitchen, they found a recipe for making methamphetamine, chemicals, funnels, dippers, coffee filters, and multiple chopping devices used to crush cold pills, including a coffee grinder with white/pink ephedrine residue in it. The officers also found Coleman camp fuel hidden inside a suitcase, salt, hydrogen peroxide, burners, chemicals, cookware, electrical tape, latex gloves, matches, and a lid to an HCL generator with tubing. In a trash can outside the house, they found an HCL generator with a homemade condenser attached to it, bottles associated with the manufacture of methamphetamine, latex gloves, small Ziploc baggies with suspected methamphetamine residue in them, a siphon pump, cans of ether, empty pill bottles, burned rags, and tubing. The officers explained the significance of these items in the manufacture of



Cite as 2011 Ark. App. 591

methamphetamine and testified that the items were found in every room of the house except for the living room.

Our review of the evidence in this case supports the trial court's grant of the forfeiture. The house was small. The amount of paraphernalia found in the house, and the fact that it was discovered in every room of the house except the living room, supports the conclusion that all of the firearms—even the ones recovered from the living room—were “in close proximity” to the paraphernalia. *See, e.g., \$15,956 in U.S. Currency v. State*, 366 Ark. 70, 233 S.W.3d 598 (2006). Moreover, it was up to the trial court to determine credibility, and it clearly did not credit the testimony of Thomas and his mother regarding her purported ownership of the firearms and the use of the house as a hunting camp. In short, we are not left with a definite and firm conviction that the trial court made a mistake in determining that forfeiture was proper in this case.

Affirmed.

ABRAMSON and MARTIN, JJ., agree.

*John F. Gibson, Jr.*, for appellant.

*Dustin McDaniel*, Att'y Gen., by: *Rachel Hurst Kemp*, Ass't Att'y Gen., for appellee.