

# ARKANSAS COURT OF APPEALS

DIVISION II  
No. CA11-382

HERMAN TROTTER

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered NOVEMBER 16, 2011

APPEAL FROM THE HEMPSTEAD  
COUNTY CIRCUIT COURT  
[NO. CV-2008-145-1]

HONORABLE WILLIAM RANDAL  
WRIGHT, JUDGE

AFFIRMED IN PART; REVERSED IN  
PART

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## JOSEPHINE LINKER HART, Judge

Herman Trotter, who was convicted of multiple offenses related to his possession of approximately twenty-eight pounds of marijuana, appeals from the circuit court's decision to order forfeiture of his 2000 GMC pick-up truck and his 1985 Chevrolet Caprice. According to the court's forfeiture order, the court found that a preponderance of the evidence proved that the vehicles were "used or intended for use, to facilitate the storage or transportation of a controlled substance." On appeal, Trotter asserts that the court clearly erred in finding that the vehicles were used to transport a controlled substance. Trotter further asserts that the court erred in ordering forfeiture based on its finding that the vehicles were used for "storage," as the statute does not provide for forfeiture based on the use of a vehicle for "storage." We affirm in part and reverse in part.

State's witness Scott Bradshaw of the Arkansas State Police testified that a confidential



informant made two controlled buys of marijuana from Trotter, the first a purchase of one-half pound of marijuana on July 16, 2008, and the second a purchase of one pound of marijuana on August 19, 2008. Both purchases were made in an old house that stood next to Trotter's mobile home. The day after the second purchase, police executed a search warrant, and they found inside the old house approximately twenty-eight pounds of marijuana, along with guns and a digital scale. Between the old house and the mobile home police found two vehicles, a 2000 GMC pick-up truck and a 1985 Chevrolet Caprice.

Bradshaw testified that a "map of east Texas" was found in the truck. Trotter told Bradshaw that he had been selling marijuana and that the marijuana came from "a white guy" in Brownsville, Texas, but he also told Bradshaw that it came from Dallas, Texas. Bradshaw testified that Trotter told him that he paid \$5000 for the marijuana, and Bradshaw opined that if Trotter was "getting it for five thousand, he's probably getting it from Brownsville, Texas," because "that's the only place that's that cheap is right there at the Mexican border." On cross-examination, Bradshaw testified that the map in the truck was of "east Texas where narcotics come from." On redirect, Bradshaw stated that Trotter told him that he "goes or gets it from a white guy in Brownsville, Texas," and the other story was that "he takes the money to Dallas, Texas, and they deliver the marijuana to him." On re-cross examination, Bradshaw again testified that Trotter told him that he "gets it from a white guy in Brownsville, Texas," that the "bundle of marijuana was fronted to him," and that "he owes the guy \$5000 for the marijuana." Bradshaw testified that he believed Trotter obtained the marijuana from Brownsville because that was the "only place you can get marijuana that



cheap” and that “[t]hey didn’t deliver it for that price.” Bradshaw admitted that it could have been anybody that delivered it for Trotter and it could have been in any vehicle.

Bradshaw further testified that a search of the Caprice revealed a “strong odor of green marijuana in the trunk” with “residue” he believed to be marijuana. Bradshaw asked Trotter about the smell of marijuana in the trunk, and Trotter told him that “he may have stored it in there.” On cross-examination, Bradshaw admitted that he did not know what batch of marijuana had been stored in the Caprice or when it had been stored.

Trotter argues on appeal that the circuit court’s decision to order forfeiture of the vehicles was clearly erroneous. He asserts that only speculation would support the conclusion that either vehicle was used to transport the marijuana. He further contends that the court erred in ordering forfeiture based on its finding that the vehicles were used for “storage” because the statute does not provide for forfeiture based on use of a vehicle for “storage.”

We first consider the evidence that the truck was used to transport the marijuana. The forfeiture statute in part subjects to forfeiture “[a]ny conveyance . . . that is used or intended for use to transport, or in any manner to facilitate the transportation for the purpose of sale or receipt of” a controlled substance. Ark. Code Ann. § 5-64-505(a)(4) (Supp. 2011). While we acknowledge that Trotter stated to Bradshaw that he obtained the marijuana from Brownsville, and Bradshaw testified that, based on the cost of the marijuana, the marijuana was probably purchased there, the presence of a map of “east Texas” in the truck does not establish that the truck was used to transport the marijuana. No one testified that the truck was used to transport the marijuana. And as the map was not introduced into evidence, there



was no proof that Brownsville even appeared on the map of “east Texas.” Thus, the evidence does not support an inference that the truck was used to transport the marijuana. We will not set aside a circuit court’s decision granting forfeiture unless it is clearly erroneous. *See, e.g., \$15,956 In U.S. Currency v. State*, 366 Ark. 70, 233 S.W.3d 598 (2006). Here, the court’s decision was clearly erroneous, and we reverse the forfeiture of the truck. *See 1993 Ford Pick-Up v. State*, 88 Ark. App. 172, 196 S.W.3d 493 (2004) (reversing forfeiture of a truck found outside a home known to be a methamphetamine laboratory where officers found in a wallet in the truck a list consistent with the distribution of drugs).

As for the Caprice, we hold that the circuit court’s decision to order forfeiture was not clearly erroneous. The court’s forfeiture order did not specify a particular statutory provision as its basis for ordering forfeiture. The forfeiture statute in part subjects to forfeiture “[a]ny property that is used, or intended for use, as a container” for a controlled substance. Ark. Code Ann. § 5-64-505(a)(3). Bradshaw testified that the trunk of the car smelled of raw marijuana, there was what he believed to be marijuana residue in the trunk, and Trotter told him that he may have stored marijuana in the trunk. Further, twenty-eight pounds of marijuana were found in the nearby house. Given this evidence, the circuit court did not clearly err in ordering forfeiture based on the use of the Caprice as a “container.” *See Lewis v. State*, 309 Ark. 392, 831 S.W.2d 145 (1992) (considering whether the evidence was sufficient that a truck was used to contain or transport marijuana).<sup>1</sup>

Trotter further challenges the circuit court’s decision to order forfeiture based on its

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<sup>1</sup>There was no evidence suggesting that the truck was used for marijuana storage.



Cite as 2011 Ark. App. 696

finding that the vehicles were used for “storage.” He asserts that because the statute does not contain the word “storage,” ordering forfeiture on this basis contravened the strictures of the statute. While admittedly the court found that the vehicles were used for “storage,” and while the word “storage” does not appear in the statute, the court did not base its decision to order forfeiture on any specific statutory provision. And the statute does provide for forfeiture of property used as a “container.” Ark. Code Ann. § 5-64-505(a)(4). The circuit court’s finding that the Caprice was used for “storage” was a finding sufficient to support the forfeiture of the Caprice based on the use of the Caprice as a “container.” And, as held above, the court’s decision to order forfeiture of the Caprice on that basis was not clearly erroneous. Accordingly, we affirm on this point.

Affirmed in part; reversed in part.

GLOVER and MARTIN, JJ., agree.