

DARBY L. HAPE vs. STATE OF INDIANA
COURT OF APPEALS OF INDIANA
903 N.E.2d 977; 2009 Ind. App. LEXIS 637
March 31, 2009, Decided

VAIDIK, Judge

Case Summary

Darby L. Hape was convicted by a jury of Class A felony possession of methamphetamine with the intent to deliver. The trial court sentenced Hape to an aggregate eighty-year term in the Department of Correction.

Facts and Procedural History

The facts most favorable to the State are as follows. In April 2007, Hape was wanted by police on several outstanding warrants. On April 19, 2007, police received a tip that Hape planned to pick up his girlfriend that day from an apartment in Petersburg, Indiana. Officers positioned themselves in the area and saw Hape enter the apartment complex. He drove a gold truck that matched the description given by the tipster. When Hape tried to exit the apartment complex in his truck, police blocked the road.

After removing Hape from his truck, the officers searched him and recovered a black container from his pocket. Inside the black container were two bags containing additional bags of methamphetamine. In total, there were seven individual bags of methamphetamine inside the container. Officers recovered another bag holding two individual bags containing methamphetamine from Hape's pocket. The bags found in the black container contained an aggregate of 3.14 grams of methamphetamine. The bags found in Hape's pocket held an aggregate of 5.12 grams of methamphetamine. Also recovered during the search of Hape and his vehicle were \$ 636 in cash, two cellular telephones, and a box of plastic bags. The cash included six one-hundred dollar bills. When officers searched the bed of Hape's truck, they found a black trash bag emitting a cloud of smoke and an ammonia smell. Inside the trash bag were two cans of starting fluid, two blackened plastic soft drink bottles with holes in their caps, a label to a lithium battery, the internal components of lithium batteries, plastic tubing, a box of sandwich bags, and a coffee or spice grinder.

The State charged Hape with possession of methamphetamine with the intent to deliver as a Class A felony and other crimes.

Discussion and Decision

Hape argues that the trial court erred in admitting opinion testimony by Trooper Gadberry regarding the amount of methamphetamine that drug users and drug dealers typically possess. He contends that Trooper Gadberry's opinion testimony was improperly admitted because, as a skilled witness rather than an expert witness, Trooper Gadberry was not permitted to testify about opinions based upon information from third parties.

Over Hape's objection, the trial court found Trooper Gadberry to be a skilled witness and allowed him to testify about the amount of methamphetamine that a user typically ingests to get high, information about the different amounts of methamphetamine typically carried by users and dealers, how methamphetamine is packaged and priced for sale, and the process of manufacturing methamphetamine. A witness may be qualified as a "skilled witness" under *Indiana Evidence Rule 701. Kubsch v. State, 784 N.E.2d 905, 922 (Ind. 2003)*. "A skilled witness is a person with a degree of knowledge short of that sufficient to be declared an expert under *Indiana Evidence Rule 702*, but

somewhat beyond that possessed by the ordinary jurors." *Id.* (quotation omitted). Pursuant to *Indiana Evidence Rule 701*, a skilled witness may provide an opinion or inference that is "(a) rationally based on the perception of the witness and (b) helpful to a clear understanding of the witness's testimony or the determination of a fact in issue." *Ind. Evidence Rule 701*.

During trial, the State established Trooper Gadberry's heightened degree of knowledge about methamphetamine. Trooper Gadberry testified as follows regarding his extensive professional experience working with methamphetamine cases: at the time of trial he had been a trooper for eight years, during that time he worked on two hundred fifty to three hundred methamphetamine cases, he worked for a period of time as a member of a clandestine methamphetamine laboratory clean-up team and was trained for this by the Drug Enforcement Administration, and he worked on the clean-up of between two hundred fifty and three hundred fifty methamphetamine laboratories. Given Trooper Gadberry's professional background, the trial court did not err in finding that he was sufficiently qualified to testify as a skilled witness.

Hape contends that *Indiana Evidence Rule 701(a)* bars the admission of Trooper Gadberry's skilled witness testimony because the opinion testimony was not rationally based upon Trooper Gadberry's own perception. The testimony at issue pertains to the difference in the amounts of methamphetamine that are typically possessed by users versus dealers. In response to a preliminary question by defense counsel, Trooper Gadberry testified that he based his knowledge of how much methamphetamine is necessary to make someone high upon "[s]peaking with confidential informants; also people that [he had] arrested." Hape then objected to Trooper Gadberry's testimony on this point, contending that the officer relied upon inadmissible hearsay in reaching an opinion. *Id.* The State responded that Trooper Gadberry was a skilled witness who could testify to this specialized knowledge, and the trial court agreed. On appeal, Hape argues that only an expert witness, not a skilled witness, can rely upon information learned through interactions with drug users, dealers, and informants and that allowing Trooper Gadberry to testify about "dose and dealing amounts, how much it takes for someone to get high, and the relationship between quantity [of methamphetamine] and personal use" constituted reversible error.

It was improper for Trooper Gadberry to testify regarding "how much methamphetamine it takes for a person to get high[.]" Such information about the effect of a chemical substance upon a person's body is scientific in nature and only an expert witness is permitted to testify regarding scientific knowledge. Trooper Gadberry did not claim that he had any personal experience with the actual use of methamphetamine that would make him a skilled witness in this regard.

While the trial court improperly permitted Trooper Gadberry to testify about the physiological effect of a particular amount of the drug upon an individual, it was perfectly acceptable for Trooper Gadberry to testify about a typical dose amount of methamphetamine, how much methamphetamine is typically packaged in a baggie, and to the kinds of quantities that indicate it is meant for sale rather than personal use. Trooper Gadberry garnered this specialized knowledge during his eight years of experience working as an Indiana State Trooper. His opinion testimony about the amount and packaging of the methamphetamine seized from Hape was rationally based upon his personal observation of the drugs in light of his personal experience. Because Trooper Gadberry's opinion testimony was rationally based on perception and helpful to the determination of a fact at issue, the trial court did not abuse its discretion in admitting this evidence.