

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-15-00255-CR

GORDON GLENN HOOVER, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 9th District Court
Montgomery County, Texas
Trial Cause No. 14-05-04954-CR**

MEMORANDUM OPINION

Gordon Glenn Hoover appeals his conviction for possession with intent to deliver a controlled substance—methamphetamine—in an amount of four grams or more but less than 200 grams. *See generally* Tex. Health & Safety Code Ann. § 481.112(d) (West 2010). After the jury returned a guilty verdict, Hoover entered a plea of true to the indictment’s habitual offender allegations and the jury assessed a sentence of imprisonment for ninety-nine years. In the two issues for this appeal, Hoover contends the trial court erred: (1) in allowing a testifying police officer to

improperly speculate about the use for a small electronic scale; and (2) in admitting photographs into evidence offered on an insufficient predicate. We affirm the trial court's judgment.

The police officer testified that he detained Hoover and a female passenger on a routine traffic stop. Hoover presented a driver's license that did not match his description. The police officer obtained Hoover's consent to search the vehicle. While looking in the center console of the vehicle, the police officer located a digital weight scale with a granulated substance on it. From his training and experience as a peace officer, the officer recognized the substance on the scale as methamphetamine. He explained, "We see it quite often in Montgomery County." The prosecutor asked, "[I]n your experience, what's the significance of this digital scale? How are they used?" The police officer replied, "For manufacture and delivery of controlled substance[s]." The prosecutor asked, "And specifically how?" Defense counsel then objected that the question called for speculation. The trial court overruled the objection, but the officer did not answer the question. The trial court sustained Hoover's objection to a follow-up question, which asked, "And if you are just using drugs in your experience, are you going to measure it before you use it on a scale or is this to divide up a bigger amount?"

In his appeal, Hoover argues that the police officer's testimony is not rationally based on his perception. *See generally* Tex. R. Evid. 701. "When conducting a Rule 701 evaluation, the trial court must decide (1) whether the opinion is rationally based on perceptions of the witness and (2) whether it is helpful to a clear understanding of the witness's testimony or to determination of a fact in issue." *Fairow v. State*, 943 S.W.2d 895, 898 (Tex. Crim. App. 1997). The witness's personal knowledge of the events on which his opinion is based may rely on the witness's senses, or it may come from experience. *Id.* "An opinion is rationally based on perception if it is an opinion that a reasonable person could draw under the circumstances." *Id.* at 900.

The police officer's testimony that scales are used in the manufacture and delivery of controlled substances was based on his personal experience as a police officer. The police officer's conclusion that the occupants of the vehicle were engaged in drug trafficking, so as to explain to the jury his decision to arrest Hoover, was supported by his rationally-based perception that there was a methamphetamine-dusted digital scale in the console of the vehicle Hoover had been driving. We overrule issue one.

In his second issue, Hoover contends the State laid an insufficient predicate for the admission of photographs depicting approximately seven grams of

methamphetamine discovered in the passenger's bra while she was being booked at the jail.¹ The police officer testified that the photographs offered as State's Exhibit Numbers 17 through 21 were taken by him personally at the police department. In his appeal, Hoover argues the only possibilities are: (1) the police officer photographed the methamphetamine, then returned it to the passenger before transporting her to the jail; or (2) the police officer returned to the police station with the methamphetamine and photographed it before returning the evidence to the jail. He argues that neither possible scenario for the sequence of events is reasonable; therefore, he contends, the police officer's testimony that the photographs accurately depict methamphetamine and paraphernalia that was found on Hoover's passenger could not be accepted as true.

Hoover argues that the police officer did not satisfactorily explain why he claimed to have photographed the contraband at the police station in Splendora when it was seized and, presumably, kept as evidence at the jail in Conroe. There was no objection to the chain of custody, however, and the trial court evidently accepted as true the officer's testimony that the photographs accurately depict the items that were taken from Hoover's passenger. Generally, the only authentication required is that

¹Other photographs, which depicted approximately 143 grams of methamphetamine that were recovered from a spot where Hoover was running from the police, were admitted without objection.

the offered photograph properly represents the person, object, or scene in question. *Huffman v. State*, 746 S.W.2d 212, 222 (Tex. Crim. App. 1988). Potential discrepancies regarding how and when the photographs were taken go to the weight of the evidence, not its admissibility. *See Pena v. State*, 467 S.W.3d 71, 75 (Tex. App.—San Antonio 2015, no pet.). We overrule issue two and affirm the trial court’s judgment.

AFFIRMED.

CHARLES KREGER
Justice

Submitted on July 5, 2016
Opinion Delivered April 26, 2017
Do Not Publish

Before McKeithen, C.J., Kreger and Horton, JJ.