

Affirmed and Opinion filed January 11, 2001.



In The

Fourteenth Court of Appeals

NOS.

14-98-01435-CR

14-98-01436-CR

LOUIS ADGER, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 177th District Court
Harris County, Texas
Trial Court Cause Nos. 788,016 and 788,017**

OPINION

A jury found the appellant guilty of delivery of less than one gram of cocaine, and guilty of possessing more than four grams of cocaine. The appellant pled true to two enhancements. The trial court sentenced him to the Texas Department of Justice–Institutional Division for concurrent sentences of twenty years for delivery and thirty years for possession.

At trial, Officer James Bailey, III testified he found on the appellant's person a marked bill police paid to the appellant for cocaine. On cross-examination, the appellant testified Officer Bailey never searched him. The prosecutor asked, "So he's lying about finding the twenty dollars on you?" Defense counsel objected that it called for speculation as to whether the officer was lying, and would invade the province of the jury. The trial court overruled the objection. The appellant contends the trial court erred because it allowed the prosecutor to ask him on cross-examination his opinion of the truthfulness of Officer Bailey's contrary account of the facts. Texas Rule of Criminal Evidence 701, he contends, did not allow him to give such an opinion because he was a lay witness. Interpreting the trial objection liberally to comport with this claim on appeal, the appellant's point of error still fails. Rule 701 states:

If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness and (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue.

TEX. R. CRIM. EVID. 701 (Vernon Supp. 1999). The State correctly replies that the factual basis for the requested opinion was established by his and the officers' testimony. Thus, as the State contends, the defendant's knowledge of the events about which Officer Bailey testified provided a factual predicate. *See Reynolds v. State*, 848 S.W.2d 785, 788 (Tex. App.—Houston [14th Dist.] 1993, pet ref'd) (finding factual basis allowed opinion testimony about the character of the accused). The question puts the specific facts at issue in focus, assisting the jury in determining the facts in issue.

By taking the stand, the defendant and Officer Bailey both put their veracity in issue. As a result, they were subject to impeachment in the same manner as any other witness. *See Prescott v. State*, 744 S.W.2d 128, 130 (Tex. Crim. App. 1988). Rule 405(a) specifically allows a competent witness to testify to his or her opinion of the truthfulness of a witness. *See Quiroz v. State*, 764 S.W.2d 395, 399 (Tex. App.—Fort Worth 1989). Cross-examination serves three general purposes: (1) to identify the witness with his community so that independent testimony may be sought and offered concerning the witness' reputation for veracity in that community; (2) to allow the jury to assess the credibility of the witness; and, (3) to allow facts to be brought out tending to discredit the witness by showing that his testimony in chief was untrue or biased. *See Carroll v. State*, 916 S.W.2d 494, 497 (Tex. Crim. App. 1996). Reputation testimony is not at issue here. However, asking whether the appellant claimed Officer Bailey's testimony was a lie focused the jury upon the credibility of the witnesses, and specifically upon the evidence that the

Appellant's testimony was untrue. This placed the issue of whom to believe squarely in the hands of the jury to decide. The Appellant's point of error is overruled.

Accordingly, the judgment of the trial court is affirmed.

/s/ Bill Cannon
Justice

Judgment rendered and Opinion filed January 11, 2001.

Panel consists of Justices Sears, Cannon, and Dunn.*

Do Not Publish — TEX. R. APP. P. 47.3(b).

*Senior Justices Ross A. Sears, Bill Cannon, and D. Camille Hutson-Dunn sitting by assignment.