

**Affirmed and Opinion filed June 7, 2001.**



**In The**

**Fourteenth Court of Appeals**

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**NO. 14-98-00352-CR**  
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**REGGIE SMITH COKER, Appellant**

**V.**

**STATE OF TEXAS, Appellee**

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**On Appeal from the 338<sup>th</sup> District Court  
Harris County, Texas  
Trial Court Cause No. 751,906**

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**OPINION**

A jury convicted the Appellant of sexual assault of a child and assessed his punishment at ten years in the Texas Department of Criminal Justice, Institutional Division. On appeal, Appellant's first three points of error contend the trial court erred in overruling his hearsay objections (1) to videotaped testimony of the fourteen year old complainant; (2) to the complainant's written statement by reading the entire statement into the record; and (3) to the Appellant's own out-of-court written statement. His fourth point of error claims the trial court erred in failing to grant a mistrial after a jury note indicated that a unanimous verdict would harm its conscience. The procedural facts of this case are dispositive. We affirm.

Each time the Appellant made his hearsay objections, the prosecutor responded that he was offering the evidence as non-hearsay. The prosecutor successfully offered both a videotape of CPS interviewing the complainant and a statement the appellant wrote for the Houston Police Department. The complainant was fourteen years old when the Appellant molested her.

Past opinions of this court have required objections to *non-hearsay* to be raised in the trial court with detailed objections. Other appellate courts have agreed. The prosecutor did not offer the evidence to which the appellant objected under an exception to the hearsay rule, *i.e.*, as admissible hearsay. Under the facts and allegations before the court, Texas Rule of Evidence 801(e) indicates the challenged statements were not hearsay. It was therefore incumbent upon the Appellant to raise some specific reason the challenged items were hearsay.

Regarding all three arguments raised upon appeal that the statements were hearsay, the Appellant failed to present in the court below the reasons he now contends Rule 802 applies. The trial court was faced with given facts and a hearsay objection, and asked to determine whether the items presented were hearsay, or not. To reclassify non-hearsay as hearsay, the trial court would have to consider arguments about evidence of recent fabrication, or when the complainant had an improper motive, or that the defendant's statements were not admissions. Otherwise, the trial court had no reason to find Rule 802 excluded the evidence. To complain on appeal that his out of court admission was hearsay, or that the complainant's out of court statements do not predate the motive to fabricate, an appellant must have objected on the same basis to the trial court. *See* 801(e)(1)(B); *Bolden v. State*, 967 S.W.2d 895, 898 (Tex. App.—Fort Worth 1998, pet. ref'd); *Meyers v. State*, 865 S.W.2d 523, 524-25 (Tex. App.—Houston [14 th Dist.] 1993, pet. ref'd); *Ray v. State*, 764 S.W.2d 406, 411 (Tex.App.—Houston [14 th Dist.] 1988, pet. ref'd). Therefore, these arguments were not preserved for appeal. See TEX. R. APP. P. 33.1(a). Appellant's first three points are overruled.

The Appellant fails to cite any authority to support his fourth claim. He contends that

the court erred in failing to declare a mistrial after the jury indicated a verdict would violate jurors' conscience. The jury spent several hours deliberating. The jury sent out two notes indicating it was deadlocked. The second note commented that reaching a verdict would harm jurors' consciences. The jury returned a verdict of guilty about thirteen minutes after the second note was filed. Requiring the jury to deliberate another thirteen minutes does not indicate coercion, and the jury's quick conclusion belies the suggestion that some jurors were so firm it would violate their conscience to find him guilty. Further, the appellant does not cite any authority for his contention, so the fourth point is waived upon appeal.. See TEX. R. APP. P. 38(h); *Aldrich v. State*, 928 S.W.2d 558, 559 (Tex. Crim. App. 1996); *Hayden v. State*, 928 S.W.2d 229, 230 (Tex. App.—Houston [14<sup>th</sup> Dist.] 1996, pet ref'd).

The judgment of the trial court is *affirmed*.

/s/

Maurice Amidei  
Former Justice

Judgment rendered and Opinion filed June 7, 2001.

Panel consists of Justices Draughn, Amidei, and Dunn.\*

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\* Senior Justices Draughn, and Dunn and Former Justice Amidei sitting by assignment.