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Affirmed and Memorandum Opinion filed October 23, 2008.

In The

Fourteenth Court of Appeals

NO. 14-06-00813 -CR

MANUEL FLORES, Appellant

v.

THE STATE OF TEXAS, Appellee

On Appeal from the 230th District Court
Harris County, Texas
Trial Court Cause No. 1062135

MEMORANDUM OPINION

Appellant, Manuel Flores, was convicted of possessing, with the intent to deliver, at least 400 grams of cocaine, and was sentenced to thirty-two years= incarceration. *See* Tex. Health & Safety Code Ann. ' 481.112 (Vernon 2003). Appellant asserts several points of error, highlighted by his contention that the trial court improperly admitted evidence of two

oral statements made by him, and requests that we reverse the judgment against him.[1] We affirm.

BACKGROUND

In March 2006, appellant arrived at the airport to pick up a shipment from Peru that, according to a tip from United States Customs officers, contained cocaine. Law enforcement officers followed appellant=s vehicle, and then detained and arrested appellant. The jury heard testimony that appellant was advised of his

legal rights, but that appellant chose to waive those rights by volunteering that he knew the package contained cocaine. Appellant was returned to the airport where, in the Houston Police Department offices, he was again given his legal warnings. He then provided a written statement, which was expressly recited as Avoluntary@ and offered of his Aown free will,@ in which he initialed each page as well as another set of legal warnings. He also volunteered to telephone other persons in an effort to obtain incriminating statements from them.

The package, which was addressed to appellant, was found to contain thirty-eight straw baskets. Each basket contained Ahundreds@ of straws into which cocaine had been Avery intricately@ woven. The State=s forensic chemistry expert, James Carpenter, tested all of the straws in one of the large baskets. Each straw contained cocaine, and the total weight of cocaine in that basket alone amounted to 490.6 grams. He also randomly selected one straw from each of the other thirty-seven baskets, each of which contained cocaine. The aggregate weight of the cocaine contained in these straws exceeded 894 grams. Carpenter extrapolated that the total amount of cocaine in the package totaled 11.4 kilograms.

Appellant was charged with possessing, with the intent to deliver, at least 400 grams of cocaine. Shortly before trial, appellant filed a motion to suppress in which he contended that his written confession was involuntary and coerced. The trial court denied the motion, finding that appellant was not threatened, assaulted, coerced, or promised anything in exchange for making the written statement. The trial judge concluded that appellant=s written statement was voluntarily, knowingly, and intelligently offered, and the case proceeded to trial.

The jury found appellant guilty. Appellant withdrew his request for the jury to assess punishment, and accepted the State=s recommended thirty-two year sentence. The trial judge accepted the parties= agreement and sentenced appellant accordingly.

Appellant timely brought this appeal, asserting at least eleven, and perhaps as many as thirteen, points of error.[2] Generally, appellant contends the trial court erred by (1) excluding evidence favorable to him, (2) refusing to provide a Spanish-language interpreter, (3) permitting the State=s expert witness to extrapolate the total amount of cocaine contained in the shipment, and (4) instructing the jury not to consider evidence of his previous conviction for impersonating a police officer. Finally, he appeals from the trial court=s admission into evidence of two oral statements made by him, and asserts that the trial court failed to prepare

findings of fact and conclusions of law concerning the voluntariness of those oral statements.

EXCLUSION OF EVIDENCE

Appellant=s first three points of error relate to the trial court=s exclusion of evidence requested by appellant. That is, appellant complains about the exclusion of evidence concerning (1) the AJohn Reid@ technique that allegedly results in false confessions, (2) the Acircumstances@ surrounding appellant=s written confession, and (3) his wife=s conversations with police, which were said to be contained on a compact disc. We hold that appellant has failed to preserve these complaints for appellate review.

In order to preserve a complaint concerning the exclusion of evidence, a defendant generally must make an offer of proof or file a bill of exception to make the substance of the evidence known. *See* Tex. R. Evid. 103(a)(2); *LaHood v. State*, 171 S.W.3d 613, 621 (Tex. App.CHouston [14th Dist.] 2005, pet. ref=d). Otherwise, as here, we cannot assess whether the exclusion was erroneous or harmful. *LaHood*, 171 S.W.3d at 621. However, appellant failed to make an offer of proof, or file a post-trial bill of exception, to preserve his complaint to the trial court=s exclusion of evidence.[3] *See* Tex. R. Evid. 103(b) (offer of proof); Tex. R. App. P. 33.2 (bill of exception).

Therefore, appellant has not preserved these issues for review. We overrule appellant=s first, second, and third points of error.[4]

EXTRAPOLATION

In his fifth point of error, appellant contends that his agreed-upon sentence was premised upon unreliable scientific evidence, because the State=s expert chemist extrapolated the total amount of cocaine from representative samples instead of testing each straw. *See Melton v. State*, 120 S.W.3d 339, 343B44 (Tex. Crim. App. 2003) (permitting testing of representative samples of cocaine).

As a prerequisite to presenting a complaint for appellate review, an appellant must show that he timely presented a specific objection to proffered evidence, and that the trial court ruled on the objection or refused to rule. *See* Tex. R. App. P. 33.1(a); *Hernandez v. State*, 53 S.W.3d 742, 745 (Tex. App.CHouston [1st Dist.] 2001, pet. ref=d); *Bushell v. Dean*, 803 S.W.2d 711, 712 (Tex. 1991). The record does not show that appellant objected to the qualifications or testimony of the State=s forensic chemist, James Carpenter. Accordingly, appellant has not preserved this complaint for appellate review.[5] *See Hepner v. State*, 966

S.W.2d 153, 159B60 (Tex. App.CAustin 1998, no pet.).

We therefore overrule appellant=s fifth point of error.

JURY CHARGE

Appellant asserts, in his sixth point of error, that the trial court committed Aegregious error@ by submitting the following jury charge instruction:

> You are instructed that certain evidence was admitted before you in regard to the defendant=s having been charged and convicted of an offense or offenses other than the one for which he is now on trial. Such evidence cannot be considered by you against the defendant as any evidence of guilt in this case. Said evidence was admitted before you for the purpose of aiding you, if it does aid you, in passing upon the weight you will give his testimony, and you will not consider the same for any other purpose.

During his trial testimony, appellant admitted that he was previously charged and convicted of impersonating a peace officer. In addition, while he admitted that he knowingly entered into a marriage for the purpose of assisting his wife to evade immigration laws, *see* 8 U.S.C.A. ' 1325(c) (2005), he denied being charged or convicted of a criminal offense for doing so. He contends, however, that the jury charge instruction constituted an improper comment on the weight of the evidence because it implied that he was convicted of entering into a fraudulent marriage. We disagree.

Given the opportunity to object to the jury charge, defense counsel failed to do so.[6] Although appellant=s failure to preserve jury-charge error does not bar appellate review, because he failed to do so, the complained-of error will not result in reversal Aunless it was so egregious and created such harm that appellant was denied a fair trial.@ *Warner v. State*, 245 S.W.3d 458, 461 (Tex. Crim. App. 2008). AEgregious harm@ may result from errors that affect the very basis of the case, vitally affect a defensive theory, or deprive the defendant of a valuable right. *Id.* at 461B62.

However, we find no error in the court=s instruction. The instruction does not refer, expressly or impliedly, to the appellant=s allegedly fraudulent marriage, and appellant in fact confirmed that he had been *convicted* of the offense of impersonating a peace officer. *See* Tex. Penal Code Ann. ' 37.12 (Vernon 2003). The court=s instruction is appropriate when proof of a defendant=s prior conviction, here, impersonating a police officer, has been admitted into evidence for impeachment purposes:

> The court may properly charge the jury that the testimony was admitted, not as proof of defendant=s guilt of the crime charged, but only as it may affect his credibility as a witness, even though the defendant does not request such instruction. The charge given was not harmful, but beneficial to the appellant and was not a comment on the weight of the evidence.

Barber v. State, 511 S.W.2d 937, 941 (Tex. Crim. App. 1974) (citation omitted).

Because we find no error in the trial court=s instruction, we overrule appellant=s sixth point of error.

ADMISSION OF ORAL STATEMENTS

Appellant=s last five points of error stem from the trial court=s admission into evidence of two oral statements, one in which appellant confirmed that the package contained cocaine and another in which appellant telephoned other persons to obtain incriminating statements from them. Appellant contends that both of these statements were uttered before he received his *Miranda*[7] warnings, and are therefore Aillegal@ under article 38.22 of the Code of Criminal Procedure. Appellant argues further that the trial court improperly failed to enter findings of fact and conclusions of law concerning the voluntariness of these statements.

Before trial, appellant filed a broadly-written motion to suppress that arguably includes these two oral statements. However, at the suppression hearing, defense counsel objected only to the introduction of appellant=s *written* statement. Appellant did not contest the voluntariness of his *oral* statements before or during trial.[8] Because appellant did not raise a question with respect to the voluntariness of his oral statements, the trial court was not required to prepare findings of fact and conclusions of law concerning their admissibility. *See* Tex. Code Crim. Proc. Ann. art. 38.22, ' 6 (Vernon 2005) (requiring findings of fact and conclusions of law Awhere a question is raised as to the voluntariness of a statement of an accused@); Tex. R. App. P. 33.1(a); *Pete v. State*, 471 S.W.2d 841, 843 (Tex. Crim. App. 1971).

In addition, appellant did not object to the admissibility of his oral statements when they were introduced at trial. Therefore, he has not preserved this issue for appellate review. *See Swain v. State*, 181 S.W.3d 359, 365 & 365 n.6 (Tex. Crim. App. 2005), *cert. denied*, 127 S. Ct. 145 (2006); *Ranson v. State*, 707 S.W.2d 96, 99 (Tex. Crim. App. 1986), *cert. denied*, 479 U.S. 840, 107 S. Ct. 147 (1986) (finding waiver for failure to object to admission of oral statements).

We therefore overrule these points of error[9] concerning the admission of his oral statements and the trial court=s refusal to prepare findings of fact and conclusions of law.

CONCLUSION

We find no merit in the issues appellant raises on appeal. We therefore affirm the judgment of

conviction.

/s/ J. Harvey Hudson
Senior Justice

Judgment Rendered and Memorandum Opinion filed October 23, 2008.

Panel consists of Justices Anderson and Frost, and Senior Justice Hudson.*

Do Not Publish C TEX. R. APP. P. 47.2(b).

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[1] At the conclusion of his brief, appellant=s prayer simply restates his points of error and omits any clear statement of the relief he seeks. *See* Tex. R. App. P. 38.1(i).

[2] Appellant=s brief is no model of clarity. A true accounting of the number of arguments presented for review is encumbered by an unusual (*i.e.*, utilizing both letters and numbers) and inconsistently-applied system for identifying appellant=s points of error throughout his brief.

[3] Appellant suggests that we may take judicial notice of information posted on a Areliable website.@ We decline appellant=s invitation to take judicial notice of the Wikipedia entry for the AJohn Reid technique.@ *See* James Glerick, *Wikipedians Leave Cyberspace, Meet in Egypt*, Wall St. J., Aug. 8, 2008, at W1 (AAnyone can edit [a Wikipedia] article, anonymously, hit and run. From the very beginning that has been Wikipedia=s greatest strength and *its greatest weakness*.@) (emphasis added).

[4] Because appellant did not preserve error regarding the exclusion of his wife=s recorded conversation with police officers, we need not address appellant=s fourth point of error concerning the trial court=s refusal to provide a Spanish-language interpreter to translate this recording to the jury.

[5] Moreover, as appellant concedes, Carpenter weighed at least 894 grams of cocaine before resorting to extrapolation for the remaining unassembled straw baskets. Appellant was convicted of possessing, with the intent to deliver, at least 400 grams of cocaine. *See* Tex. Health & Safety Code Ann. ' 481.112(f). Accordingly, the State was required to prove only that the aggregate weight of cocaine met or exceeded 400 grams, not that it totaled 11.4 kilograms. *See id.*; *Melton*, 120 S.W.3d at 344 (requiring the State to prove only that the weight of the controlled substance exceeds the alleged minimum weight for conviction).

[6] The record from the formal charge conference includes the following exchange:

THE COURT:	Does the State have any objections to the Court=s charge?
MS. MCCORVEY:	No, Your Honor.
THE COURT:	Does the Defense have any?
MR. RICHARDS:	You did a good job, Judge.

[7] *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602 (1966)

[8] For this reason, we are not persuaded that appellant was deprived of due process and due course of law. Appellant argues that, before a confession may be admitted into evidence, the trial court first must determine its voluntariness, citing *Jackson v. Denno*, 378 U.S. 368, 84 S. Ct. 1774 (1964). However, whether a confession was freely given is to be decided at a

Jackson hearing only if the issue has been properly raised before the trial court. *See Wolfe v. State*, 917 S.W.2d 270, 282 (Tex. Crim. App. 1996); *see also Miller v. State*, 387 S.W.2d 401, 403 (Tex. Crim. App. 1965) (declining to apply *Jackson* where appellant failed to question voluntariness when confession was offered into evidence); *Creswell v. State*, 387 S.W.2d 887, 891 (Tex. Crim. App. 1965) (same). A mere request for a suppression hearing, without more, does not equate to a request that the trial court determine the voluntariness of a confession. *See Wolfe*, 917 S.W.2d at 282. The trial court was presented with sufficient evidence of voluntariness, and appellant Agave the trial court no reason to believe otherwise.@ *Id.*

[9] We are hamstrung in our efforts to identify these points of error in any fashion other than collectively, because appellant=s brief inconsistently labels one of these issues as either issue 7 *or* 8, and identifies the other four issues by letters (*i.e.*, issue AA,@ AB,@ AC,@ and AD@).

_ * Senior Justice J. Harvey Hudson sitting by assignment.