

Reversed and Remanded, and Opinion Filed June 27, 2018.



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-17-00561-CR

**MICHAEL RICHARD DURHAM, Appellant
V.
THE STATE OF TEXAS, Appellee**

**On Appeal from the County Court at Law No. 6
Collin County, Texas
Trial Court Cause No. 006-84383-2016**

MEMORANDUM OPINION

Before Justices Lang, Myers, and Stoddart
Opinion by Justice Lang

Michael Richard Durham appeals the trial court's judgment convicting him of driving while intoxicated (D.W.I.), second offense, a class A misdemeanor. The jury found Durham guilty and the trial court assessed his punishment at forty-five days of confinement. Durham raises two issues on appeal, arguing: (1) the trial court erred when it denied his motion to suppress; and (2) the trial court erred when it allowed the State to disclose to the venire panel he had been previously convicted of a prior D.W.I. and required the State to prove his prior conviction as an element of the offense.

A review of the record in this appeal shows that evidence of Durham's prior conviction was introduced during the guilt or innocence phase of the trial. After the parties briefed the issues in this appeal, the Texas Court of Criminal Appeals issued its opinion in *Oliva v. State*, No. PD-

0398-17, 2018 WL 2329299 (Tex. Crim. App. May 23, 2018). In *Oliva*, the Texas Court of Criminal Appeals held that “litigation of the prior-conviction allegation” under section 49.09(a) is a punishment issue. *Oliva*, 2018 WL 2329299, at *12. In light of that ruling, the portion of Durham’s second issue, arguing the trial court erred when it required the State to prove his prior conviction as an element of the offense, is decided in his favor. Accordingly, we need not address Durham’s remaining arguments on appeal.

The trial court’s judgment is reversed and remanded for further proceedings consistent with this opinion.

/Douglas S. Lang/
DOUGLAS S. LANG
JUSTICE

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**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

MICHAEL RICHARD DURHAM,
Appellant

No. 05-17-00561-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the County Court at Law
No. 6, Collin County, Texas
Trial Court Cause No. 006-84383-2016.
Opinion delivered by Justice Lang. Justices
Myers and Stoddart participating.

Based on the Court's opinion of this date, the judgment of the trial court is **REVERSED** and the cause **REMANDED** for further proceedings consistent with this opinion.

It is **ORDERED** that appellee THE STATE OF TEXAS recover its costs of this appeal from appellant MICHAEL RICHARD DURHAM.

Judgment entered this 27th day of June, 2018.