

Reverse and Remand; Opinion Filed June 12, 2018.



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

No. 05-17-01311-CR

**JAMES TYRIE BEATS, Appellant
V.
THE STATE OF TEXAS, Appellee**

**On Appeal from the County Court at Law
Rockwall County, Texas
Trial Court Cause No. CR14-1576**

MEMORANDUM OPINION

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

Before the Court is the May 31, 2018 State's motion, asking that we reverse the trial court's judgment and remand this case to the trial court for a new trial.

A review of this appeal shows that James Tyrie Beats was convicted of driving while intoxicated—2nd offense and that evidence of his prior conviction was introduced during the guilt/innocence phase. After the jury found him guilty, the trial court sentenced appellant to 200 days in Rockwall County Jail, probated for twenty-four months, and a \$1500 fine. On April 9, 2018, appellant filed a brief in which he contended, among other issues, that the trial court committed harmful error by treating the existence of a single prior conviction for misdemeanor DWI under penal code section 49.09(a) as an element of the offense instead of as a punishment

issue. In his brief, appellant asks this Court to reverse the trial court's judgment and remand this case to the trial court for a new trial.

On May 23, 2018, the Texas Court of Criminal Appeals issued its opinion in *Oliva v. State*, PD-0398-17, 2018 WL 2329299, at *12 (Tex. Crim. App. May 23, 2018), in which it held that "litigation of the prior-conviction allegation" under section 49.09(a) is a punishment issue. In light of this, the State filed the motion, conceding error as to appellant's first issue.

We grant the motion. We reverse the trial court's judgment and remand this case to the trial court for further proceedings consistent with this opinion. *See* TEX. R. APP. P. 43.2(d).

/Craig Stoddart/
CRAIG STODDART
JUSTICE

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TEX. R. APP. P. 47.2(b)
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**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

JAMES TYRIE BEATS, Appellant

No. 05-17-01311-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the County Court at Law,
Rockwall County, Texas

Trial Court Cause No. CR14-1576.

Opinion delivered by Justice Stoddart,
Justices Lang and Myers 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.

Judgment entered this 12th day of June, 2018.