

Affirmed and Opinion filed October 28, 1999.



In The

## Fourteenth Court of Appeals

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NO. 14-97-00515-CR

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**STEPHEN MARK TRIPLETT, Appellant**

V.

**THE STATE OF TEXAS, Appellee**

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On Appeal from the 262<sup>nd</sup> District Court  
Harris County, Texas  
Trial Court Cause No. 742,782

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### OPINION

Stephen Mark Triplett appeals his conviction for felony driving while intoxicated (DWI). We affirm his conviction.

In his first point of error, Triplett appeals that evidence of his two prior convictions for misdemeanor DWI is only admissible in the punishment phase of trial for enhancement purposes. However, the two prior misdemeanor DWI convictions are prerequisites to elevate this third DWI to a felony. TEX. PEN. CODE ANN. § 49.09(b) (Vernon Supp. 1999). There can be no felony DWI without the two prior convictions. As such, the prior convictions are jurisdictional elements of felony DWI, not merely enhancement allegations. *Gibson v. State*,

995 S.W.2d 693, 696 (Tex. Crim. App. 1999); *State v. Mewbourn*, 993 S.W.2d 771, 773 (Tex. App.–Tyler 1999, no pet. h.); *Tamez v. State*, 980 S.W.2d 845, 847 (Tex. App.– San Antonio 1998, pet. granted); *Maibauer v. State*, 968 S.W.2d 502, 507 (Tex. App.–Waco 1998, pet. ref'd). To prove guilt for felony DWI, the State must prove the convictions for the two prior misdemeanors during its case-in-chief in the guilt/innocence phase of trial. *Gibson*, 995 S.W.2d at 696; *Hampton v. State*, 977 S.W.2d 467, 469 (Tex. App.–Texarkana 1998, pet. ref'd); *Williams v. State*, 946 S.W.2d 886, 897 (Tex. App.–Waco 1997, no pet.). Accordingly, it was not error for the trial court to rule that Triplett's two prior DWI's were admissible in the guilt/innocence phase of trial for this offense. We overrule point of error one.

Triplett raised his second point of error, regarding the involuntariness of his plea, only if we did not reach the merits of his first point of error. As we have addressed the merits of the first point, the second point is moot. Thus, we affirm the judgment of the trial court.

/s/ Norman Lee  
Justice

Judgment rendered and Opinion filed October 28, 1999.

Panel consists of Justices Draughn, Lee, and Hutson-Dunn.\*

Do Not Publish — TEX.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

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\* Senior Justices Joe L. Draughn, Norman Lee, and D. Camille Hutson-Dunn sitting by assignment.