
YEAR 2005 CASE SUMMARIES

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Admission of prior adjudication and testimony by parole officer sufficient proof defendant was previously adjudicated in juvenile court[Mackey v. State] (05-1-21)

On February 9, 2005, the San Antonio Court of Appeals held that an admission by the criminal defendant and testimony by a parole officer were sufficient proof of identity.

05-1-21. Mackey v. State, UNPUBLISHED, No. 04-04-00330-CR, 2005 WL 291468, 2005 Tex.App.Lexis ____ (Tex.App.—San Antonio 2/9/05) *Texas Juvenile Law* (6th Ed. 2004).

Facts: Michael Mackey appeals his conviction for aggravated assault with a deadly weapon. On appeal, Mackey complains that the trial court erred in admitting evidence of two prior juvenile adjudications during the punishment phase of the trial. Mackey argues that the State failed to sufficiently link him to the two prior adjudications.

In support of his argument that the State failed to sufficiently link him to two of the prior adjudications, Mackey notes that the State did not offer any expert testimony as to fingerprints and did not introduce any photographs of the person involved in the two prior adjudications. Mackey maintains that this type of evidence was necessary because the only evidence linking him to the prior adjudications is the same name and date of birth.

The Texas Code of Criminal Procedure provides that during the punishment phase, a trial court may admit evidence of prior criminal convictions. Tex.Code Crim. Proc. Ann. art. 37.07, § 3(a) (Vernon Supp.2004). Although certified copies of Mackey's prior judgments and sentences are admissible, these documents standing alone are not sufficient to prove his prior convictions. Tex.R. Evid. 901(b)(7); *Beck v. State*, 719 S.W.2d 205, 210 (Tex.Crim.App.1986). In addition to offering certified copies of the judgments and sentences, the State must offer evidence showing Mackey was the same person named in the prior convictions. *Id.*; see also *Howard v. State*, 896 S.W.2d 401, 405 (Tex.App.—Amarillo 1995, pet. ref'd); *Rosales v. State*, 867 S.W.2d 70, 72 (Tex.App.—El Paso 1993, no pet.). Without the evidence linking Mackey to the prior convictions, the prior convictions are not relevant. *Rosales*, 867 S.W.2d at 72.

The Court of Criminal Appeals has recognized four ways to prove prior convictions: (1) testimony of a witness who personally knows the defendant and the fact of his prior conviction; (2) stipulation or judicial admission of the defendant that he has been so convicted; (3) introduction of certified copies of the judgment, sentence, and record of the Texas Department of Corrections or a county jail including fingerprints of the accused supported by expert testimony identifying them with known prints of the defendant; or (4) comparison by the fact finder of a record of conviction which contains photographs and a detailed physical description of the named person, with the appearance of the defendant, present in court. *Daniel v. State*, 585 S.W.2d 688, 690-91 (Tex.Crim.App.1979) (citations omitted). These methods

are not exclusive. *Littles v. State*, 726 S.W.2d 26, 28 (Tex.Crim.App.1984). Evidence sufficient to link Mackey to the prior convictions can also include identification information, such as name, gender and date of birth. *Williams v. State*, 946 S.W.2d 886, 895 (Tex.App.—Waco 1997, no pet.).

At the beginning of the punishment phase, Mackey pled "True" to the enhancement allegation, Cause No. 98 JUV00761, a prior adjudication for possession of a controlled substance with intent to deliver. A certified copy of that adjudication was introduced into evidence, which identified the individual found delinquent as Michael Mackey, male, and indicated the individual's date of birth. Additionally, that documentation identified Mackey's mother and the identification number assigned to him upon entry to the Bexar County Jail (SID number). The certified copies of the two additional adjudications of which Mackey complains contain the same identifying information: name, gender, date of birth, mother and SID number.

Additionally, Patrick Williams, a parole officer with the Texas Youth Commission, testified at trial. Williams identified Mackey as the person he supervised for over two years. Williams testified that during the time he supervised Mackey, he conducted an in-home assessment with Mackey's mother, held hearings with Mackey regarding parole violations and visited Mackey in the hospital. Williams stated that Mackey was the individual connected with all three adjudications.

When considered in the aggregate, the matching identifying information and the testimony of Williams support a rational finding that Mackey is the same person named in the prior adjudications. *See Beck*, 719 S.W.2d at 210-11; *Rosales*, 867 S.W.2d at 72-73. The prior adjudications were sufficiently linked to Mackey; therefore, the trial court did not err in admitting certified copies of the adjudications. The judgment of the trial court is affirmed.