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Case Name: [Carlton Wood v. The State of Texas](#)

- OFFENSE: Evading Arrest
- COUNTY: Bexar
- C/A CASE No. 04-14-00224-CR
- DATE OF OPINION: December 17, 2014
- DISPOSITION: Conviction Reversed OPINION: [Martinez, J.](#)
- TRIAL COURT: 226th D/C; Hon. Sid Harle
- LAWYERS: [David McLane](#) (Defense); [Jay Brandon](#) (State)

(Background Facts) During the guilt/innocence phase, Appellant testified that he previously had “one drug conviction” for which he had been to prison “in the 2000’s.” Appellant provided no details concerning that prior drug conviction, and stressed that he had been to prison only once. On cross-examination, the prosecutor questioned Appellant about two prior charges for drug-related offenses: (i) possession of one to four grams of a controlled substance on October 30, 2000; and (ii) possession with intent to deliver four to 200 grams of a controlled substance on February 7, 2002. Appellant did not admit to being convicted of either of those charges and no documentary evidence was presented by the State with regard to these alleged charges. The prosecutor did not question Appellant about the September 23, 2002 conviction for possession of one to four grams of a controlled substance that was alleged in the enhancement paragraph of the indictment. No documentary proof of that conviction was offered or admitted. After the trial court found Appellant guilty of the evading arrest charge, it ordered a pre-sentence investigation report to be prepared before sentencing.

⚖ **534.01 Sufficiency of the Evidence / Prior Convictions:** At the beginning of the punishment hearing, the trial court stated on the record, “[t]he enhancement was found true.” The court did not take Appellant’s plea of “true” or “not true” to the enhancement on the record. During the hearing, the court did not specify whether its finding that the enhancement was “true” was based on a plea of “true” (which does not appear in the record) or on other proof of the prior conviction alleged in the indictment. No objection was raised by Appellant. During a discussion after the trial court’s statement that “the enhancement was found true,” Appellant agreed he had served three years and been on parole for three

years. On appeal, Appellant argues the finding in the judgment that the enhancement paragraph is “true” is without any basis. Appellant asserts that because he did not enter a plea of “true” to the enhancement on the record and the State failed to present any evidence to prove up the prior conviction, the trial court erred in finding the enhancement “true.” The State argues that because Appellant failed to object in the trial court, a presumption applies that he pled “true” to the enhancement as recited in the judgment.

Holding: To establish a prior conviction for purposes of enhancement, the State must prove two elements beyond a reasonable doubt: (i) the existence of a prior conviction; and (ii) the defendant’s link to that conviction. *** As noted, the record does not affirmatively show that Wood entered any plea at all to the enhancement allegation. Without a plea of “true” in the record, we proceed with our analysis by determining whether the State met its burden of proof on the enhancement allegation. *** Based on the record before us, we conclude the State wholly failed to establish the September 23, 2002 prior conviction alleged in the enhancement paragraph of the indictment. The State did not introduce a certified copy of the judgment for that offense as is customary, and did not offer any other type of documentary or testimonial proof of the alleged September 23, 2002 conviction. While the State attempted to get Wood to admit to two other drug charges with different dates, he refused to admit to being convicted for those offenses. Finally, Wood’s vague testimony that he had “one drug conviction” for which he went to prison “in the 2000’s” was insufficient, without more, to prove up the enhancement allegation in the indictment. *** The State not only failed to prove the conviction to be used for enhancement beyond a reasonable doubt, it failed to present even prima facie evidence of the conviction. Therefore, contrary to the State’s argument, no presumption of regularity attached to the judgment’s recitals with respect to the enhancement conviction.

Ed Note: The Court of Appeals rejected the State’s assertion that any error in the enhancement proceedings is harmless because the four-year sentence Wood received is within the punishment range for a third degree felony with no enhancement, holding that, “a failure of proof on an enhancement allegation is not subject to a harmless error analysis.”