

## Review of Recent Juvenile Cases (2008)

by  
The Honorable Pat Garza  
Associate Judge  
386th District Court  
San Antonio, Texas

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### **Evidence deemed legally insufficient to support jury's finding that school in arson adjudication was "within the limits of an incorporated city." [In the Matter of V.V.C.](08-2-15)**

**On April 23, 2008, the San Antonio Court of Appeals concluded that in light of the State's judicial admission that the School (in arson prosecution) was not "within the limits of an incorporated city," no rational fact finder could find that element, beyond a reasonable doubt, as required by the petition, jury charge, and arson statute.**

¶ 08-2-15. **In the Matter of V.V.C.**, MEMORANDUM OPINION, No. 04-07-00166-CV, 2008 WL 1805479 (Tex.App.-San Antonio, 4/23/08).

**Facts:** On April 11, 2006, the State filed an original petition alleging that V.V.C., a then 12 year old juvenile, had engaged in delinquent conduct by committing the felony offense of arson [\[FN1\]](#) at Metzger Middle School. An adjudication hearing was conducted before a jury in September 2006. The evidence showed that a fire was intentionally started in the boys' restroom at Metzger Middle School, causing smoke damage to the building. Ernest Christilles, a fire investigator with the Bexar County Fire Marshal, testified that, based on his investigation, the fire was intentionally set by bringing a flame into contact with a paper towel; he also testified that his area of response is "unincorporated areas of Bexar County," and the incident occurred in an unincorporated area. A teacher testified that she saw V.V.C. and another child, M.A., running away from the restroom at the time smoke started coming out. M.A. testified that he saw V.V.C. in the boys' restroom, spraying Axe Body Spray and using a lighter to cause a fire. Finally, Officer Hernandez, assigned to the Judson Independent School District, testified that Metzger Middle School is within Bexar County but outside the City of San Antonio, while Maria Ruiz, an assistant vice-principal at Metzger, testified that the school is located "in San Antonio." At the conclusion of the hearing, the jury found that V.V.C. had engaged in delinquent conduct by committing arson. After a disposition and restitution hearing, the court found a need for disposition, placed V.V.C. on probation until the age of 18, with various conditions, and ordered him to make restitution in the amount of \$18,865 to the school district.

[FN1.](#) The elements of arson, as alleged in this case, are: (1) a person starts a fire, regardless of whether the fire continues after ignition, (2) with the intent to destroy or damage, (3) any building, (4) knowing it is within the limits of an incorporated city or town. [Tex. Penal Code Ann. § 28.02\(a\)\(2\)\(A\)](#) (Vernon Supp.2007).

**Held:** Reversed and Found that Child Did Not Engage in Delinquent Conduct.

**Memorandum Opinion:** On appeal, V.V.C. challenges the legal sufficiency of the evidence to support the jury's findings that (1) he had the specific intent to destroy or damage the school building, and (2) the school building is within the city limits of San Antonio, and that he had knowledge of such location; he also challenges the trial court's denial of his motion for mistrial based on the admission of extraneous offense evidence. With respect to V.V.C.'s second issue concerning the location of the school building within the city limits, the State makes the affirmative statement in its appellee's brief that Metzger Middle School is *not*, in fact, within the incorporated city limits of San Antonio, and concedes that, "[a]ppellant is actually innocent of the statutory crime of arson as it was alleged in the petition." The State asserts, however, that because V.V.C. is only challenging legal sufficiency on appeal, and there was some testimony that the school is "in San Antonio," the appropriate procedure for relief is through a writ of habeas corpus. We disagree. We accept the State's affirmative statement in its brief that Metzger Middle School is not within the incorporated city limits of San Antonio as a judicial admission of that fact. See [City of San Antonio v. Hardee, 70 S.W.3d 207, 212 \(Tex.App.-San Antonio 2001, no pet.\)](#) (appellate court may accept statements made in party's brief as true, as a judicial admission); see also [Jansen v. Fitzpatrick, 14 S.W.3d 426, 431 \(Tex.App.-Houston \[14th Dist.\] 2000, no pet.\)](#) (same). Therefore, in light of the State's judicial admission as to the location of Metzger Middle School, we conclude that no rational fact finder could find beyond a reasonable doubt that the school is "within the limits of an incorporated city," as required by the petition, jury charge, and arson statute. [Tex. Penal Code Ann. § 28.02\(a\)\(2\)\(A\)](#) (Vernon Supp.2007). Accordingly, we sustain V.V.C.'s second issue and hold the evidence is legally insufficient to support the jury's finding on this essential element of the offense. See [In re L.A.S., 135 S.W.3d 909, 913 \(Tex.App.-Fort Worth 2004, no pet.\)](#); [In re K.T., 107 S.W.3d 65, 71 \(Tex.App.-San Antonio 2003, no pet.\)](#) (applying criminal standard of review for legal sufficiency to adjudication of juvenile delinquency). Given our resolution of this issue, we need not reach V.V.C.'s other issues.

**Conclusion:** Based on the foregoing reasons, the trial court's judgment is reversed and judgment is rendered that V.V.C. did not engage in the alleged delinquent conduct. See [In re B.L.D., 113 S.W.3d 340, 351 \(Tex.2003\)](#) (juvenile delinquency proceedings are "quasi-criminal"); [Swearingen v. State, 101 S.W.3d 89, 95 \(Tex. Crim.App.2003\)](#) (when evidence is legally insufficient due process requires that appellate court reverse and render judgment of acquittal).