Juvenile Law Case Summaries

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Arson of school proved by juvenile setting fire to toilet paper and dispenser [In re C.S.B.] (03-1-01).

On December 5, 2002, the Houston Fourteenth District Court of Appeals upheld an adjudication of arson of a school upon proof that the juvenile set toilet paper and a dispenser on fire.

03-1-01. In the Matter of C.S.B., UNPUBLISHED, No. 14-02-00052-CV, 2002 WL 31718567, 2002 Tex.App.Lexis ____ (Tex.App.--Houston [14 Dist.] 12/5/02) [Texas Juvenile Law (5th Edition 2000)].

Facts: Appellant, a juvenile, set fire to a toilet paper dispenser in the boys' bathroom at Ball High School in Galveston. He was charged by petition of delinquency with arson; he entered a plea of not guilty. A jury convicted appellant and the trial court placed appellant with the Texas Youth Commission for an indeterminate period until he reaches 21 years of age. On appeal, appellant contends the State failed to introduce legally and factually sufficient evidence to support the jury's verdict.

Held: Affirmed.

Opinion Text: Appellant contends the State had the burden of showing he started the fire with the "intent to damage or destroy" the school. Because the bathroom was constructed of ceramic tile and other non-combustible materials, appellant claims he could not have intended to damage the school, and thus, the evidence was legally insufficient to establish that he committed arson.

In evaluating a legal sufficiency challenge, we view the evidence in the light most favorable to the verdict and determine whether a rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307, 319 n. 12 (1979); Garrett v. State, 851 S.W.2d 853, 857 (Tex.Crim.App.1993). We will not overturn the verdict unless it is irrational or unsupported by proof beyond a reasonable doubt. Matson v. State, 819 S.W.2d 839, 846 (Tex.Crim.App.1991). The jury, as the trier of fact, "is the sole judge of the credibility of witnesses and of the strength of the evidence." Fuentes v. State, 991 S.W.2d 267, 271 (Tex.Crim.App.1999). The jury may believe or disbelieve any portion of the witnesses' testimony. Sharp. v. State, 707 S.W.2d 611, 614 (Tex.Crim.App.1986). Therefore, if any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt, we must affirm. McDuff v. State, 939 S.W.2d 607, 614 (Tex.Crim.App.1997).

A person commits arson, "if he starts a fire or causes an explosion with intent to destroy or damage any building, habitation, or vehicle...." Tex. Pen.Code Ann. § 28.02(a)(2) (Vernon 1994). A person acts with intent, "with respect to the nature of his conduct or to a result of his conduct when it is his conscious objective or desire to engage in conduct or cause the result." Tex. Pen.Code Ann. § 6.03(a) (Vernon 1994). While intent may not be inferred from the mere act of burning, it may be inferred from the defendant's acts, words, and conduct. Beltran v. State, 593 S.W.2d 688, 689 (Tex.Crim.App.1980). Appellant argues the evidence is legally insufficient because the school was made of non-flammable materials and the State failed to present any other evidence from which a reasonable jury could infer that appellant intended to damage or burn the school.

Thus, appellant seems to suggest that intent to commit arson cannot be shown unless the building is made of flammable materials. The statute requires an, "intent to destroy or damage any building ..." Tex. Pen.Code Ann. § 28.02(a)(2) (Vernon 1994). However, material need not be combustible to be damaged by fire. Romo v. State, 593 S.W.2d 690 (Tex.Crim.App.1980), overruled on other by Wagner v. State, 687 S.W.2d 303 (Tex.Crim.App.1984); Beltran, 593 S.W.2d at 689. A fire may produce scorching and smoke damage without igniting the surrounding materials. Id. Furthermore, arson is complete whenever the defendant starts a fire with the requisite mental state, regardless if any actual damage occurs. Romo, 593 S.W.2d at 693. Here, the record demonstrates the school was actually damaged by the fire; the wall of the bathroom stall was scorched and the bathroom sustained smoke damage.

Appellant committed the offense when he set the toilet paper on fire, not when officials determined if the school was actually

combustible and whether it was damaged. See id. Furthermore, the State presented ample evidence establishing appellant's intent. Appellant returned from the bathroom and moments later the fire alarms sounded. Appellant also told several students that he started the fire. Finally, appellant told conflicting stories about his involvement in the fire. Thus, we find the evidence is legally sufficient to prove appellant's intent. Accordingly, appellant's first issue is overruled.

In appellant's second issue, he contends the evidence is factually insufficient. However, appellant failed to preserve error. In civil cases, to preserve error on a complaint of factually insufficiency, a party must file a motion for a new trial. Tex.R. Civ. P. 324(b)(2); In re D.T.C., 30 S.W.3d 43, 51 (Tex.App.--Houston [14th Dist.] 2000, no pet.). Juveniles appealing delinquency judgments are governed by the Texas Rules of Civil Procedure unless a conflict exist, and thus, a juvenile must file a motion for new trial to preserve error on a factually sufficiency issue. In the Matter of M.R., 858 S.W.2d 365, 366 (Tex.1993). Because appellant failed to file a motion for new, he failed to preserve error. Id.

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