A Brief History of the Tenth Court of Appeals
By Chief Justice Frank G. McDonald, Retired (Deceased)
(Updated by Chief Justice Tom Gray)

When the McLennan County Courthouse was built in 1901, County Judge J.N. Gallagher (later the first Chief Justice of the Tenth Court of Appeals) foresaw that the Legislature might in the future create a Court of Civil Appeals for Central Texas to sit in Waco. Consequently, he caused the fourth floor of the courthouse to be built, but left unoccupied, to later house an appellate court.

In 1923 the Legislature created the Tenth Supreme Judicial District to be composed of twelve counties: Bosque, Brazos, Coryell, Falls, Freestone, Hamilton, Hill, Leon, Limestone, Madison, McLennan, and Robertson. The Legislature added Johnson, Navarro, Somervell, and Hood Counties in 1927; removed Hood County in 1929; added Ellis County in 1932; and added Burleson and Walker Counties in 2005.

The Court of Civil Appeals for the Tenth Supreme Judicial District met for its first regular session in the 74th District Courtroom of the McLennan County Courthouse at 10:00 a.m. on June 30, 1923. Associate Justices James M. Robertson of Meridian and G.W. Barcus of Waco constituted the first court. They appointed D.W. Stallworth of Marlin as the Clerk of the Court, set the first six cases for submission on the first Thursday in October, and adjourned until the first Monday in October 1923.

Governor Pat M. Neff originally tendered the appointment of Chief Justice to District Judge W.C. Davis of Brazos County. Judge Davis, however, visited Waco to look the situation over, returned to Bryan, and declined the appointment. Meanwhile, Associate Justice Robertson, who never moved to Waco from Meridian, decided he would rather stay in Meridian and resigned on September 30, 1923. J.W. Spivey of Falls County succeeded him as Associate Justice on October 1, 1923. Governor Neff also appointed the Honorable J.N. Gallagher, a member of the Commission of Appeals of the Supreme Court, to serve as the court's first Chief Justice. Chief Justice Gallagher took the oath of office on November 1, 1923.

The enabling legislation provided that "if said court is located in Waco, the citizens thereof will furnish, provide and equip a suitable room or rooms for said court and the members thereof, without cost or expense to the State." The City of Waco initially fulfilled this requirement by contracting the County to furnish the fourth floor of its courthouse. The Waco Law Library Corporation (composed of Waco lawyers) donated its books to become the court's library.

In 1981 the Courts of Civil Appeals were renamed Courts of Appeals and were granted appellate jurisdiction "in all criminal cases except those in which the death penalty has been assessed." The title of Associate Justices was changed in 1985 to Justices. In 1987 the Legislature changed all references to Supreme Judicial Districts to Courts of Appeals Districts. The Tenth Court of Appeals was granted the authority to sit in any county within the Tenth Court of Appeals District in 1991.

Among the Justices of the Tenth Court of Appeals were Associate Justice James P. Alexander (1931-40), who was elected Chief Justice of the Texas Supreme Court in 1940; Associate Justice Frank Wilson (1959-71), who had taught Practice Court at Baylor Law School since 1947; Chief Justice Frank G. McDonald (1953-88), who held the longest tenure as Chief Justice; and Chief Justice Bob L. Thomas (1982-1996).

The current court consists of Chief Justice Tom Gray of Waco, Justice Rex D. Davis of Waco, and Justice Al Scoggins of Ennis. Chief Justice Gray, who was elected Justice in 1998, had previously served as municipal judge of Rice and practiced in Central and East Texas before joining the Court. He received a BBA, cum laude, from Sam Houston State University in 1978, an MBA from Texas A&M University in 1979 and his JD degree, cum laude, from Baylor University School of Law in 1985. He was appointed Chief Justice in December 2003, elected in 2004 for the unexpired term of former Chief Justice Davis, and reelected to a full term in 2006 and 2012. Justice Davis initially came to the Tenth Court in May, 1996 and served as Chief Justice from 1996 to 2003. He did his undergraduate
work at Temple College and the University of Texas and earned his JD degree cum laude from Baylor University School of Law. In 2008 and 2014 he was elected to consecutive 6 year terms as Justice. Justice Davis has been the past president of the Waco-McLennan County Bar Association. He is a Fellow, Texas Bar Foundation and Bar Member, College of the State Bar of Texas and has been a Lecturer at the Baylor Law School for 16 years. Justice Scoggins was elected in 2010 to a 6 year term as Justice on the Court, and re-elected in 2016, after serving for more than 26 years as a trial judge in Ellis County beginning at age 28. He received a BBA degree in Accounting from Baylor University in 1977 and his JD degree from Baylor University School of Law in 1979.

**Justices of the Tenth Court of Appeals**

**CHIEF JUSTICES**

Jesse N. Gallagher – 11/1/1923 to 12/31/1940
Ben H. Rice, Jr. – 01/01/1941 to 10/15/1945
Giles P. Lester – 10/18/1945 to 12/31/1952
Frank G. McDonald – 01/01/1953 to 12/31/1988
Bob L. Thomas – 01/01/1989 to 02/20/1996
Rex D. Davis – 05/31/1996 to 08/04/2003
Tom Gray – 12/10/2003 to present

**JUSTICES – Place 2**

James M. Robertson – 06/30/1923 to 09/30/1923
John W. Spivey – 10/01/1923 to 12/31/1924
J.A. Stanford – 01/01/1925 to 12/31/1930
James P. Alexander – 01/01/1931 to 12/31/1940
Joseph W. Hale – 01/01/1941 to 04/15/1959
Frank M. Wilson – 04/16/1959 to 04/24/1971
John A. James, Jr. – 05/25/1971 to 3/31/1982
George Chase – 04/01/1982 to 12/14/1982
Terry Means – 01/01/1989 to 12/31/1990
Bill Vance – 01/01/1991 to 12/31/2008
Rex D. Davis – 01/01/2009 to present

**JUSTICES – Place 3**

George W. Barcus – 6/30/1923 to 12/31/1932
J.A. Stanford – 01/01/1933 to 12/31/1937
Ballard W. George – 7/15/1937 to 11/15/1939
Jake Tirey – 11/21/1939 to 12/31/1968
Vic Hall – 01/01/1969 to 11/30/1990
Bobby L. Cummings – 12/01/1990 to 12/31/1998
Tom Gray – 01/01/1999 to 12/09/2003
Felipe Reyna – 01/05/2004 to 12/31/2010
Al Scoggins – 01/01/2011 to present
Thank you for attending oral argument in these proceedings. If you want to track the development of the proceedings that are being argued, proceed as follows:

Go to the Court’s Web Site:  http://www.txcourts.gov/10thcoa

On the web site, along the left side of the page under “Case Information,” you will see “Case Search.”

Click on “Case Search.”

That should take you to a screen that will ask you for certain information. Enter a case number in the spaces provided and click “search.” This will take you to a docket sheet on the case that will describe what has happened in the case. Near the top left hand part of the case screen will be the caption “case mail,” which is a great tool.

If you click on “case mail,” it will take you to a log-in screen and ask you to register a name and password. If you enter the information requested, each time something happens in that case you will receive an email notice and a link that will take you back to the docket sheet for that case. With a little effort and practice, you will be able to track what is happening in each proceeding. You can sign up for “case mail” for as many proceedings as you want to track. You will use the same name and password for all proceedings that you are tracking and when you log back into case mail you will be provided a listing of all cases that the system shows that you are tracking.

If you have any problems or question, please call the clerk’s office at 254-757-5200 and they will be happy to assist you.

NOTE:  *Summaries were prepared by the parties and edited by Court staff. These summaries will not be filed with the papers in the case and cannot be used as an admission.*
On October 15, 2014, Christian Amadeus Taylor, a 20-year-old biochemistry major at Texas A&M University (TAMU), told a fellow student that he had just ingested cyanide, which was removed from the biochemistry lab. Police, Fire, and EMS arrived on the TAMU campus and provided medical care to Christian. Christian was rushed to the hospital but died less than 48 hours later. Christian’s parents, Kevin and Michelle Taylor, subsequently brought a wrongful death suit against TAMU, alleging that TAMU acted negligently in providing Christian a key that allowed him access to the lab and in failing to properly secure the cyanide within the lab.

TAMU, as an institution of the State of Texas, generally has sovereign immunity from suit and liability. For a trial court to have subject-matter jurisdiction over a lawsuit against TAMU, a valid waiver of immunity must therefore be established. TAMU filed a plea to the jurisdiction, asserting that there had been no waiver of immunity and that the trial court had no subject-matter jurisdiction over this lawsuit against TAMU. Christian’s parents responded that TAMU’s immunity had been waived and that the trial court did have subject-matter jurisdiction over this lawsuit against TAMU. The trial court denied TAMU’s plea to the jurisdiction, which allowed the lawsuit to proceed.

TAMU has appealed from the trial court’s order denying its plea to the jurisdiction. A court of appeals generally has no jurisdiction to hear an appeal from a judgment that is not final, but there is specific statutory authority permitting an appeal from an interlocutory order denying a plea to the jurisdiction by a governmental unit. TAMU seeks reversal of the trial court’s order denying its plea to the jurisdiction. Christian’s parents seek to affirm the order denying TAMU’s plea to the jurisdiction and to proceed with the lawsuit.
Warren Lewis was accused and convicted by a jury of the murder of Machelle Archie in Walker County, Texas and sentenced to 75 years’ confinement in the Texas Department of Criminal Justice-Institutional Division.

The day after the murder, Lewis was arrested by a DPS Trooper for driving while intoxicated and tampering with physical evidence. Lewis argued at trial that there was no probable cause to arrest Lewis for either of the charges and that the arrest was therefore unlawful. Lewis further argued that the unlawful arrest resulted in the subsequent confessions of Lewis being inadmissible as fruit of the poisoned tree/the product of unlawful conduct on the part of law enforcement.

Lewis also argued that he was too intoxicated to voluntarily waive his 5th Amendment rights prior to his confession(s) and that the use of over 20 autopsy photographs during the trial were unfairly prejudicial to Lewis.

Lastly, Lewis argues that the State of Texas intentionally withheld information from the defense related to 2 potential witnesses in the case for the tactical purpose of insulating those witnesses from potential cross-examination on these issues if the witnesses were called to testify at trial. Lewis alleges that these 2 individuals kidnapped and intimidated his wife the day after the murder and that these witnesses were intentionally and strategically withheld from being presented to the grand jury until after the murder trial. Following the conclusion of the murder trial, the 2 prospective witnesses were ultimately indicted for kidnapping, tampering with a witness, and impersonating a public servant.

Lewis argued that the intentional withholding of this information violated his due process rights and prohibited him from thoroughly investigating all avenues of defense during the guilt/innocence phase of trial and mitigation at the punishment phase of his trial.
On January 21, 2012, around 2:00 am, Appellant, Mukhtar Owais, was driving three female passengers through the Texas A&M University campus. Texas A&M Police Officers Lopez and Jackson along with Security Officer Browning were on campus patrolling on foot. The officers observed Owais’s black SUV driving north, the wrong direction, down Houston Street. Lopez and Browning observed Owais’s vehicle drive up onto the sidewalk along Houston Street. As Owais continued driving on the sidewalk, Lopez and Browning began running after the vehicle on foot and yelling at Owais to stop. Owais did not stop, but instead accelerated. Owais’s vehicle then left the sidewalk, drove in the bike lane, and made a hard left into the post office parking lot, jumping multiple curbs. A female riding in the passenger side of Owais’s vehicle, Sarah Armstrong, told Owais to stop because she believed a police officer was shining a flashlight and trying to stop Owais.

Lopez and Browning continued to run after the vehicle, yelling stop. At one point, Browning actually reached out and struck the rear side window with his hand in order to get Owais to stop. Owais instead made a U-turn out of the post office parking lot and ran a stop sign. Owais then made several winding turns through campus and drove past Jackson and his patrol vehicle. Jackson shined his flashlight directly into the driver side window and observed Owais look at him. Eventually Lieutenant Shaffer, in his patrol vehicle, caught up with Owais. When Shaffer activated his overhead lights, Owais pulled over.

Owais was found guilty by a jury of felony evading arrest with a vehicle for intentionally fleeing from Lopez, a person Owais knew was a police officer. The trial court assessed punishment at five years in the Institutional Division of the Texas Department of Criminal Justice probated for five years, a fine of $750, standard conditions of community supervision and twenty days in jail to be served on weekends.

In his first issue, Owais claims that the State’s evidence is legally insufficient to sustain his conviction. In a felony evading case, the State must prove the following elements beyond a reasonable doubt: (1) defendant intentionally; (2) flees; (3) from a person he knows is a peace officer; (4) attempting to arrest or detain him; and (5) uses a vehicle while in flight. Here, Owais claims that no rational jury could have found, beyond a reasonable doubt, that Owais knew the person who was trying to lawfully arrest or detain him was a peace officer.

Before considering the first issue, the State contends that the Court does not have jurisdiction to hear this appeal, and it should be dismissed, arguing that Owais did not timely file notice of appeal nor timely request an extension of time to file notice of appeal. The State challenges the Court’s jurisdiction notwithstanding the State did not oppose Appellant’s motion for leave to file a notice of appeal, which this Court granted.