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G&S Vol. 20, No. 16 - April 23, 2012

Case Name: Conrad Lilly v. The State of Texas

- ! OFFENSE: Assault on a Public Servant
- ! COUNTY: Jones
- ! COURT OF APPEALS: Eastland 2011
- ! C/A CITATION: 337 S.W.3d 373
- ! C/A RESULT: Conviction Affirmed
- ! CCA. CASE No. PD-0658-11 DATE OF OPINION: April 18, 2012
- ! DISPOSITION: Court of Appeals Reversed
- ! OPINION: [Hervey, J.](#) VOTE: 7-1-1
- ! TRIAL COURT: 259th D/C; Hon. Brooks Hagler
- ! LAWYERS: [Roger Donley](#) (Defense); [Melinda Fletcher](#) (State)

Ed Note: (Background Facts) The French Robertson Unit of the TDCJ-CID is in Jones County and is approximately thirty-six miles from Anson, the county seat. Until the early 1990s, groups of inmates charged with committing offenses while in prison were bused to the Jones County Courthouse for arraignment and other non-jury proceedings. The bus and other prison vehicles blocked the entire north side of the courthouse. Because there was no holding cell in the courthouse, one inmate at a time was taken out of the bus and into the courtroom to attend his hearing. After his hearing, the inmate was taken back to the bus to wait. Escorting an inmate to and from the courtroom required at least two TDCJ guards. Armed TDCJ guards were also posted around the outside of the courthouse, on each floor of the courthouse, and within the courtroom itself. This situation not only posed security concerns, it also alarmed local residents.

G&S 62 Challenges to Prosecution / Constitutionality / Equal Protection: Appellant was indicted on two counts of assault on a public servant. He was arraigned in the chapel of the Robertson Unit. The chapel had Bibles and a stained glass window with a cross and a representation of the Ten Commandments. Appellant learned that the next hearing in his case would also be held at the prison's chapel, and he filed a plea to the jurisdiction and a motion to transfer the proceedings to a public courthouse. Appellant argued that having hearings at the prison deprived him of his right to a public trial and that having them in a chapel violated the First Amendment. The trial court denied Appellant's plea to the jurisdiction and his motion to transfer. The Court of Appeals affirmed the conviction, holding that held that trial proceedings, which were convened at the prison-chapel courtroom, were not closed to the public, that a violation of the Establishment Clause is not structural error, and that the violation of the Establishment Clause in his case was harmless (see [G&S, Vol. 19, No. 9](#); 03/07/2011).

Holding: Although there is sufficient evidence to determine that Appellant's trial was closed to the public, the pretrial hearing and the ruling of the trial court do not constitute the findings of facts necessary to justify closing Appellant's trial. * * * We hold that because the trial court failed to

make findings of fact that justified closing Appellant's trial, the closure was improper and, as a result, Appellant's Sixth Amendment right to a public trial was violated.

Concurring / Dissenting Opinions: Presiding Judge Keller concurred and Judge Meyers dissented, both without note.