

DECIPHERING THE NEW
CRIMINAL APPEAL BOND STATUTE

JEFF SHELL, Rockwall
Rockwall County District Attorney's Office

Appellate Tactics for the Modern Practitioner
Waco, April 30, 2026

Jeffrey W. Shell

Rockwall County District Attorney's Office

Jeffrey W. Shell is Chief of the Appellate and White Collar/Financial Crimes divisions of the Rockwall County District Attorney's Office. He is a seasoned prosecutor specializing in prosecution of felony, white-collar crime, criminal appeals and civil asset seizure-forfeiture cases. He has served in the Rockwall County District Attorney's Office for 19 years, and was a civil and appellate litigator since 1992. He served as a briefing attorney for Chief Justice Charles L. Reynolds of the Seventh Judicial District Court of Appeals in Amarillo.

He is also a special prosecutor for several District Attorney's Offices in the north Texas. He is the presiding judge for the municipal court in Lavon, Texas.

DECIPHERING THE NEW CRIMINAL APPEAL BOND STATUTE

Baylor Law School – April 30, 2026

By Jeffrey W. Shell, Assistant Criminal District Attorney (Rockwall County)/Special Prosecutor

I. **Introduction.**

In 2025, the Texas Legislature enacted legislation that created an avenue for appeal by the State of Texas, when the prosecutor believes bail to be insufficient in certain cases. Two statutory provisions were affected: (1) Article 44.01(a) of the Texas Code of Criminal Procedure and (2) Rule 31.8 of the Texas Rules of Appellate Procedure; each of which are set forth below.

1. **Article 44.01(a)(7) of the Texas Code of Criminal Procedure.**

Effective September 1, 2025, article 44.01(a) of the Code was amended to add subsection (a)(7). *See* Tex. Code Crim. Proc. Ann. art. 44.01(a)(7). That subsection provided that: “(a) The State is entitled to appeal an order of a court in a criminal case if the order: . . .

(7) grants bail, in an amount considered insufficient by the prosecuting attorney, to a defendant who:

(A) (1) is charged with an offense under any of the following sections of the Penal Code:

- (i) section 19.02 (murder);
- (ii) section 19.03 (capital murder);
- (iii) section 22.02 (aggravated assault) if;

- (a) the offense was committed under section 22.02(a)(1); or
- (b) the defendant used a firearm, club, knife, or explosive weapon, as those terms are defined in section 46.01 of the Penal Code, during the commission of the assault;

- (iv) section 20.04 (aggravated kidnapping);
- (v) section 29.03 (aggravated robbery);
- (vi) section 22.021 (aggravated sexual assault);
- (vii) section 21.11 (indecent with a child);
- (viii) section 20A.02 (trafficking of persons); or
- (ix) section 20A.03 (continuous trafficking of persons); or

(B) is charged with an offense punishable as a felony while the defendant was released on bail for an offense punishable as a felony at the time the instant offense was committed.

2. **Rule 31.8 of the Texas Rules of Appellate Procedure.**

On February 6th, the Supreme Court of Texas issued Misc. Docket No. 26-9009, approving Rule 31.8. <https://www.txcourts.gov/ccm/miscellaneous-docket-orders/>. Rule 31.8 now provides:

Supreme Court of Texas

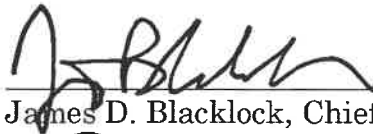
Misc. Docket No. 26-9009

Final Approval of New Texas Rule of Appellate Procedure 31.8

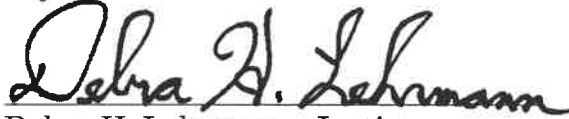
ORDERED that:

1. On August 29, 2025, in Misc. Dkt. No. 25-9059, the Court preliminarily approved new Texas Rule of Appellate Procedure 31.8.
2. The new rule took effect on September 1, 2025, and the Court invited public comment until December 1, 2025.
3. Following the comment period, the Court made revisions to the rule. This order incorporates the revisions and contains the final version of the rule, effective immediately. The final version is shown in both redline and clean forms. The redline form shows changes made since Misc. Dkt. No 25-9059.
4. The Clerk is directed to:
 - a. file a copy of this order with the Secretary of State;
 - b. send a copy of this order to the Governor, the Lieutenant Governor, and each elected member of the Legislature;
 - c. cause a copy of this order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;
 - d. submit a copy of this order for publication in the *Texas Register*.

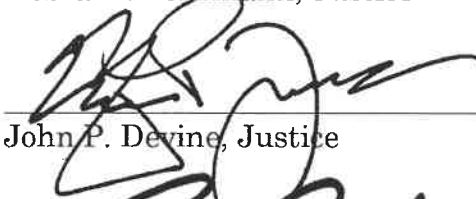
Dated: February 6, 2026.



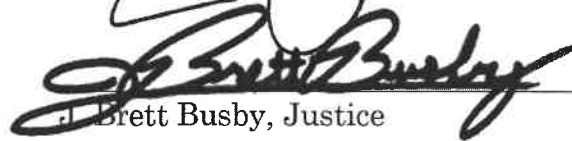
James D. Blacklock, Chief Justice



Debra H. Lehrmann, Justice



John P. Devine, Justice



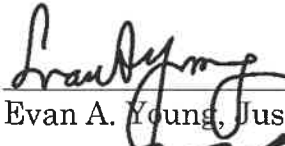
J. Brett Busby, Justice



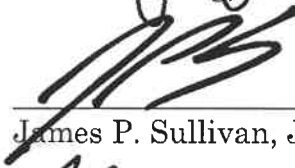
Jane N. Bland, Justice



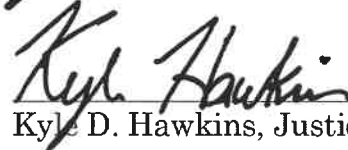
Rebeca A. Huddle, Justice



Evan A. Young, Justice



James P. Sullivan, Justice



Kyle D. Hawkins, Justice

TEXAS RULES OF APPELLATE PROCEDURE (CLEAN FORM)

Rule 31. Appeals in Habeas Corpus, Bail, and Extradition Proceedings in Criminal Cases

31.8. Expedited Appeal by the State of an Order Granting Bail

- (a) *Application.* This rule applies to an appeal by the State of an order granting bail, in an amount considered insufficient by the prosecuting attorney, to a defendant who:
- (1) is charged with an offense under any of the following sections of the Penal Code:
 - (A) section 19.02 (murder);
 - (B) section 19.03 (capital murder);
 - (C) section 22.02 (aggravated assault) if;
 - (i) the offense was committed under section 22.02(a)(1); or
 - (ii) the defendant used a firearm, club, knife, or explosive weapon, as those terms are defined in section 46.01 of the Penal Code, during the commission of the assault;
 - (D) section 20.04 (aggravated kidnapping);
 - (E) section 29.03 (aggravated robbery);
 - (F) section 22.021 (aggravated sexual assault);
 - (G) section 21.11 (indecentcy with a child);
 - (H) section 20A.02 (trafficking of persons); or
 - (II) section 20A.03 (continuous trafficking of persons); or
 - (2) is charged with an offense punishable as a felony while the defendant was released on bail for an offense punishable as a felony at the time the instant offense was committed.

(b) *State's Notice of Appeal.*

- (3) Contents. The State's notice of appeal must comply with Code of Criminal Procedure Article 44.01 and expressly state that the appeal is an expedited appeal under Articles 44.01(a)(7), (f-1), and (f-2) and this rule.
- (4) Time and Where to File. Within 10 days after an order is signed granting bail in an amount considered insufficient by the prosecuting attorney, the State must file the notice of appeal with the district clerk.
- (3) Service of Notice and Rule. The State must immediately serve on the defendant, or counsel if the defendant is represented, the notice of appeal and a copy of this rule.

(c) *Appellate Record.*

- (1) State Duties. The State must file with its notice of appeal a bookmarked appendix containing a certified or sworn copy of:
 - (A) the order granting bail in an amount considered insufficient by the prosecuting attorney, bail findings, bail conditions, and any supervision order;
 - (B) any reporter's record from a bail hearing resulting in the order granting bail in an amount considered insufficient by the prosecuting attorney, including any exhibits; and
 - (C) every document that was filed with or presented to the magistrate making the bail decision, including as applicable:
 - (i) the charging documents;
 - (ii) the risk assessment;
 - (iii) the mental health assessment under Code of Criminal Procedure Article 16.22;
 - (iv) the magistration forms;
 - (v) the indigency affidavit;

- (vi) orders for emergency protection or other protective orders in effect; and
 - (vii) the pretrial supervision documents, including documents related to violations.
- (2) **Supplementation Permitted.** The defendant may supplement the State's record with a certified or sworn copy of any additional material filed with or presented to the magistrate that the State failed to provide.
- (d) *Reporter's Record.* The magistrate must ensure that any reporter's record from a bail hearing is prepared within 5 days of the State's requesting the record and arranging for payment.
- (e) *Further Bail Decisions.* While the appeal is pending, the State must immediately notify the court of appeals and supplement the record if any subsequent action has been taken on the bail order.
- (f) *Briefing on Appeal.*
 - (1) **Form and Length.** Briefs need not comply with Rule 38 and may be in the form of a motion or letter. A brief must not exceed 3,000 words.
 - (2) **No Extensions.** No extensions of time will be granted.
 - (3) **State's Brief.** The State's brief must include the identity of parties and counsel, specify the reasons it considers the bail amount insufficient, and be supported by citations to authorities and to the record. The State's brief must also include the State's requested relief on appeal, including the bail amount the prosecuting attorney considers sufficient. The State must file a brief within 5 days after filing the notice of appeal.
 - (4) **Defendant's Brief.** The defendant's brief, if any, should respond to the State's brief. The defendant's brief must be filed within 5 days after the State's brief is filed.
- (g) *Representation on Appeal.* The defendant's trial or appellate counsel, if any, is authorized to respond to the State's appeal.
- (h) *Order by the Court of Appeals.*
 - (1) **Review and Time.** The court of appeals must conduct a de novo review of all issues presented, expedite the appeal, and issue an order within 20 days after the date the appeal is filed.

- (2) Types of Orders. The court of appeals may:
 - (A) affirm the bail amount set;
 - (B) modify the bail amount set; or
 - (C) reject the bail amount set and remand the case, with or without guidance, for modification of the bail amount.
- (3) Opinion Not Required. The court of appeals may hand down a written opinion but is not required to do so.
- (i) *Implementation of Modified Bail Amount.* If the court of appeals modifies the bail amount, the court of appeals must direct the magistrate to certify the bail form on the court of appeals' behalf, update any reporting systems, and submit any required forms by the relevant deadlines.

Comment to 2025 change: New Rule 31.8 is added to implement the amendments to Article 44.01 of the Code of Criminal Procedure.

II. **Tactics for the Practitioner, Trial or Appellate.**

A. **The Nature of, and Time for Filing, the State's Notice of Appeal.**

1. **The Nature of the Filing.**

Rule 31.8(b) provides that “[t]he State’s notice of appeal must comply with Code of Criminal Procedure Article 44.01 and expressly state that the appeal is an expedited appeal under Articles 44.01(a)(7), (f-1), and (f-2) and this rule.” *See* Tex. R. App. P. 31.8.

Article (f-1) of the Code required that, in an appeal filed under Subsection (a)(7), a court of appeals *shall*:

- (1) conduct a de novo review of all issues presented;
- (2) expedite the appeal; and
- (3) issue an order not later than the 20th day after the date the appeal is filed.

Article (f-2) of the Code provided that, in an appeal filed under Subsection (a)(7), a court of appeals *may*:

- (1) affirm or modify the bail amount set by the court; or
- (2) reject the bail amount set by the court and remand the case to the court, with or without guidance, for modification of the bail amount.

See Tex. Code Crim. Proc. Ann. art. 44.01(f-1), (f-2).

2. **The Time for Filing.**

Rule 31.8(b) also provides that “[w]ithin 10 days after an order is signed granting bail in an amount considered insufficient by the prosecuting attorney, the State must file the notice of appeal with the district clerk.” *See* Tex. R. App. P. 31.8.

B. **Tactics for the Practitioner.** Of significance: several considerations arise for the practitioner, trial or appellate: (1) does your particular case even involve one of the specific felony offenses in article 44.01(a)(7) and Rule 31.8(a)? If not, then the State has no right to appeal.

(2) The State’s filing-deadline is 10 days under Rule 31.8, not 20 days under other provisions of article 44.01 of the Code. *Compare* Tex. R. App. P. 31.8 *with* Tex. Code Crim. Proc. Ann. art. 44.01(d). For criminal defense attorneys, was the State’s filing of its notice timely?

(3) Did the State’s notice of appeal expressly state that “the appeal is an expedited appeal under Articles 44.01(a)(7), (f-1), and (f-2) and this rule.” If not, what is the defense’s tactic? (e.g. motion to dismiss?).

(4) Article 44.01(g) provides that “[i]f the [S]tate appeals pursuant to this article and the defendant is on bail, the defendant shall be permitted to remain at large on the existing bail.” *See* Tex. Code Crim. Proc. Ann. art. 44.01(g). Exception: “If the defendant is in custody, the defendant

is entitled to reasonable bail, as provided by law, unless the appeal is from an order which would: . . . (2) grant bail in an amount considered insufficient by the prosecuting attorney, in which event the defendant shall be held in custody during the pendency of the appeal.” See Tex. Code Crim. Proc. Ann. art. 44.01(g)(2). Consider: Should the State move for an immediate stay under article 44.01(e), to prevent the defendant’s release on the insufficient-bail amount?

(5) Other considerations: must an elected County Attorney or Criminal District Attorney sign the notice of appeal? May an assistant county/criminal district attorney sign the notice of appeal? See Tex. Code Crim. Proc. Ann. art. 44.01(i).

(6) Is a “certification” required to confer jurisdiction on the court of appeals, as in article 44.01(a)(5)? See *State v. Redus*, 445 S.W.3d 151, 152 (Tex. Crim. App. 2014).

(7) What if the State’s notice of appeal is in some way defective? Consider: should defense counsel object and move to dismiss? See, e.g., *State v. Riewe*, 13 S.W.3d 408, 412 (Tex. Crim. App. 2000). Or, does Rule 25.2(f) allow for an amended notice of appeal by the State?

III. Available Case Law Thus Far.

A. Orders from Court of Appeals.

A copy of a publication is included herein. See Roker, Raphael R., *Appeals Court Throws Out \$3,000 Bail For Man Charged With Child Indecency In McLennan County* (2026 KWTX).

In *The State of Texas v. Jackson King*, No. 10-26-00053-CR (Tex. App.—February 25, 2026, no pet.) (per curiam order) (not designated for publication), the court of appeals “reject[ed] the magistrate’s order setting King’s bail at \$3,000.00 and remand[ed] to the magistrate with instructions to modify the amount of the bail, including consideration of the PSR and what conditions of bail should be included for the protection of the victim and the community.” See Slip. op. at 4 (reference to footnote omitted).

In *The State of Texas v. Brent William Curry*, No. 03-26-00308-CR, No. 03-26-00309-CR, No. 03-26-00310-CR, No. 03-26-00311-CR, No. 03-26-00312-CR, 2026 Tex. App. LEXIS 3134, 2026 WL 911593 (Tex. App.—Austin April 3, 2026, no pet.) (per curiam) (not designated for publication), the court of appeals abated the State’s appeals and remanded to the trial court for “entry of signed orders memorializing its oral ruling approving personal bond on appellee’s motions for bail reductions.” See Slip op. at 1.

B. Tactics for the Practitioner, Trial or Appellate.

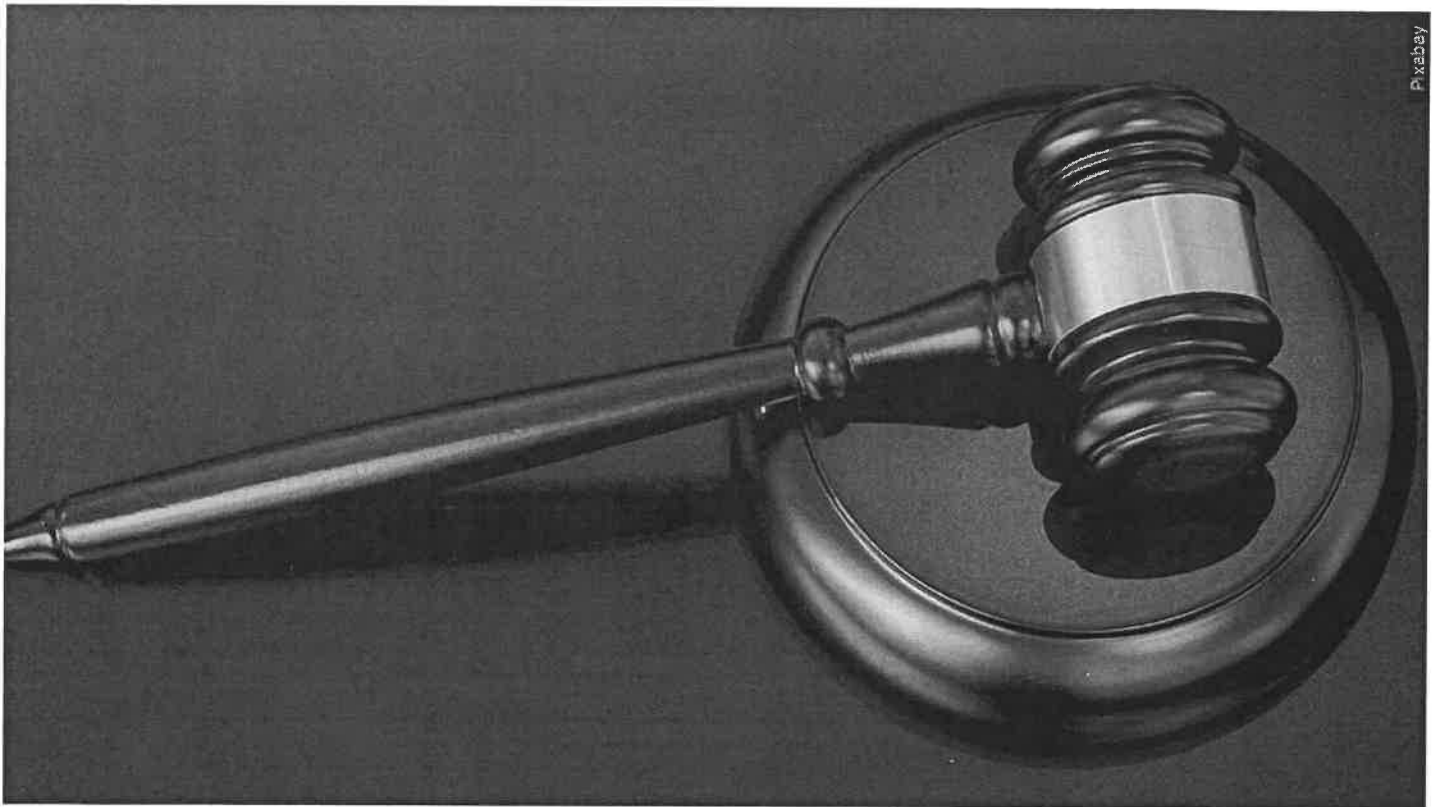
From the available case law thus far, several considerations arise for the practitioner: (1) how is an allegedly-insufficient bond for a defendant reduced to writing? (2) How is a reporter’s record perfected, if magistrate warnings are not recorded, as in most jurisdictions and jails/detention centers in Texas?

III. Questions?



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Appeals court throws out \$3,000 bail for man charged with child indecency in McLennan County



Sophon Heng, was charged in Phoenix federal court on Friday with possessing 26 live Asian arowana. (MGN | MGN Image (Credit))

By Raphael R. Roker



WACO, Texas (KWTX) — For the first time in McLennan County, prosecutors have successfully used a new state law to appeal a magistrate’s bail decision — and a state appeals court agreed with them.

The 10th Court of Appeals sided with the McLennan County District Attorney’s Office Thursday in a case involving Jackson King, who was arrested on a charge of indecency with a child by exposure. Magistrate Virgil Bain set King’s bail at \$3,000 after his arrest and did not impose any conditions of bond, according to the DA’s Office.

How it got to the appeals court

Prosecutors first asked 54th District Court Judge Susan Kelly to review the bail decision under a separate new law. She declined, saying she did not have the authority to review a magistrate’s decision, according to the DA’s Office. Prosecutors then took the case to the 10th Court of Appeals.

The \$3,000 bail and the lack of any bond conditions weren’t enough to keep the victim and the community safe — or to ensure King would comply, prosecutor Kirsty Koopmans argued. Koopmans asked the court to raise King’s bail to \$25,000 and add conditions prohibiting King from contacting the victim, going near the victim’s home, school, or church, and having any contact with children under 17.

What the court decided

The appeals court agreed with prosecutors, writing in its ruling, “[W]e reject the magistrate’s order setting King’s bail at \$3,000.” The court sent the case back to the magistrate to set a new bail amount and ordered the magistrate to consider “what conditions of bail should be included for the protection of the victim and the community.”

“As prosecutors, our greatest priority is ensuring the safety of crime victims and of our community,” District Attorney Josh Tetens said. “For that reason, we are actively using, and will continue to use, the new tools that the Texas Legislature created for prosecutors to challenge bail decisions that might endanger public safety.”

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Court of Appeals
Tenth Appellate District of Texas

10-26-00053-CR

The State of Texas,
Appellant

v.

Jackson King,
Appellee

On appeal from the
54th District Court of McLennan County, Texas
Judge Susan N. Kelly, presiding
Trial Court No. 2026-17-BH2

PER CURIAM order of the Court.

ORDER

The State has appealed from the magistrate's bail amount of \$3,000.00 which was set after King's arrest by warrant for indecency with a child by exposure. *See* TEX. CODE CRIM. PROC. 44.01(a)(7), (f-1)(1), (f-2)(2); TEX. R. APP. P. 31.8. The State argues that the amount of bail is insufficient because it is too low to ensure the defendant's compliance and that conditions should be included for the safety of the victim and the community. The State further

argues that the magistrate failed to consider the criminal history record information, more commonly referred to as the “PSR,” in setting the amount of bail.

When a defendant is charged with the offense of indecency with a child under Section 21.11 of the Texas Penal Code, Article 44.01(a)(7)(A)(vii) of the Texas Code of Criminal Procedure allows the State, through its prosecuting attorney, to appeal a magistrate’s order setting a defendant’s bail at an amount that it believes is inadequate. TEX. CODE CRIM. PROC. art. 44.01(a)(7)(A)(vii). In this appeal, the State argues that the bail in the amount of \$3,000.00 was not adequate and that there should have been conditions of bail included for the safety of the victim and the community.

Pursuant to Article 44.01(f-1)(1) of the Texas Code of Criminal Procedure, in cases such as this one, we “conduct a de novo review of all issues presented.” TEX. CODE CRIM. PROC. art. 44.01(f-1)(1).

Article 17.15(a) of the Texas Code of Criminal Procedure sets forth the factors that are to be considered when fixing the amount of bail. They are as follows:

(a) The amount of bail and any conditions of bail to be required in any case in which the defendant has been arrested are to be regulated by the court, judge, magistrate, or officer taking the bail in accordance with Articles 17.20, 17.21, and 17.22 and are governed by the Constitution and the following rules:

1. Bail and any conditions of bail shall be sufficient to give reasonable assurance that the undertaking will be complied with.

2. The power to require bail is not to be used to make bail an instrument of oppression.

3. The nature of the offense and the circumstances under which the offense was committed are to be considered, including whether the offense:

(A) is an offense involving violence as defined by Article 17.03; or

(B) involves violence directed against a peace officer.

4. The ability to make bail shall be considered, and proof may be taken on this point.

5. The future safety of a victim of the alleged offense, law enforcement, and the community shall be considered.

6. The criminal history record information for the defendant, including information obtained through the statewide telecommunications system maintained by the Department of Public Safety and through the public safety report system developed under Article 17.021, shall be considered, including any acts of family violence, other pending criminal charges, and any instances in which the defendant failed to appear in court following release on bail.

7. The citizenship status of the defendant shall be considered.

TEX. CODE CRIM. PROC. art. 17.15(a).

After independently reviewing the record provided in the Appendix to the Notice of Appeal, the State's brief,¹ and the factors set forth in Article

¹ King did not file a brief.

17.15, including the PSR, the Court finds that the magistrate's order that assessed bail in the amount of \$3,000.00 was inadequate. The Magistrate's Order of Commitment states that "the affidavit submitted for Probable Cause Determination as to the above named accused in the above referenced matter has been presented to me and upon consideration of the facts and circumstances contained therein" was considered by the magistrate in determining that probable cause exists and in setting bail at \$3,000.00, but did not set any conditions of bail. The order does not include findings as to whether or not the magistrate considered the safety of the victim or the community or the PSR.² Accordingly, we reject the magistrate's order setting King's bail at \$3,000.00 and remand to the magistrate with instructions to modify the amount of the bail, including consideration of the PSR and what conditions of bail should be included for the protection of the victim and the community.³ *See* TEX. R. APP. P. 31.8(h).

² The magistrate provided the State with a copy of the Magistrate's Warning, Magistrate's Order of Commitment, and a copy of the Arrest Warrant upon request for purposes of this appeal. The State did not provide a copy of its request to the magistrate in its Notice of Appeal or brief to this Court, so we are unable to determine if the magistrate failed to provide requested documents.

³ Although our review of the amount of bail is *de novo*, we note that the Appendix filed by the State in this appeal was insufficient to assist us in this review, including the lack of the affidavit submitted for Probable Cause which the magistrate appears to have considered. Without that information, we are unable to provide more guidance as to the proper amount or conditions of bail.

IT IS SO ORDERED.

ORDER ISSUED and FILED: February 25, 2026

Before Chief Justice Johnson,
Justice Smith, and
Justice Harris
Bail rejected and remanded



State v. Curry

Court of Appeals of Texas, Third District, Austin

April 3, 2026, Filed

NO. 03-26-00308-CR, NO. 03-26-00309-CR, NO. 03-26-00310-CR, NO. 03-26-00311-CR, NO. 03-26-00312-CR

Reporter

2026 Tex. App. LEXIS 3134 *; 2026 LX 121056; 2026 WL 911593

The State of Texas, Appellant v. Brent William Curry,
Appellee

Notice: PLEASE CONSULT THE TEXAS RULES OF APPELLATE PROCEDURE FOR CITATION OF UNPUBLISHED OPINIONS.

Prior History: [*1] FROM THE 207TH DISTRICT COURT OF COMAL COUNTY. NOS. CR2020-667D, CR2022-063D, CR2024-715D, CR2025-1022D, CR2025-1023D, THE HONORABLE DIB WALDRIP, JUDGE PRESIDING.

Disposition: Abated and Remanded.

Core Terms

trial court, abate, bail, memorialize

Counsel: For The State of Texas, Criminal - State of Texas: The Honorable Stacey M. Soule, Mr. Joshua D. Presley, Mr. Sammy M. McCrary, The Honorable Jennifer A. Tharp.

For Curry, Brent William, Appellee: Mr. Maynard Austin, Mr. Joseph E. Garcia III.

Judges: Before Chief Justice Byrne, Justices Theofanis and Ellis.

Opinion

ORDER AND MEMORANDUM OPINION

PER CURIAM

The State filed notices of appeal from "any Trial Court Orders, Rulings, and Bail Determinations." See *Tex. Code Crim. Proc. art. 44.01(a)(7)*. The State says that in at least three of these failure-to-appear cases, the trial

court orally granted "PR bonds" to appellee, and that appealable orders "were apparently entered on or about March 11, 2026." The Code of Criminal Procedure allows the state's appeal of a court order granting bail in an amount that a prosecuting attorney considers insufficient. *Id.* The time for a prosecuting attorney's appeal begins on the date that the order or ruling to be appealed is "entered by the court," *id. art. 44.01(d)*, meaning from "the signing of an order by the trial judge." *State v. Rosenbaum*, 818 S.W.2d 398, 402 (Tex. Crim. App. 1991); *State v. Abduljabbar*, No. 03-24-00708-CR, 2025 Tex. App. LEXIS 897, 2025 WL 492507, at *6 (Tex. App.—Austin Feb. 14, 2025, no pet.) (mem. op., not [*2] designated for publication). The clerk's records do not contain any written trial-court orders granting PR bonds to appellee.

However, the reporter's record of a March 11 bond-reduction hearing for three of these cases contains the trial court's approval of such bonds: "I'll approve the personal bonds, but with the condition to include GPS monitoring to be paid for by the defendant." Cf. *Abduljabbar*, 2025 WL 492507, at *6-7 (declining state's request for abatement of its appeal and concluding that there was no existing order to be memorialized in writing on remand where trial court stated on record that it had not signed any order and was withholding any ruling). Under the circumstances presented, we abate these appeals and remand these causes to the trial court for entry of signed orders memorializing its oral ruling approving personal bonds on appellee's motions for bail reduction.

It is ordered April 3, 2026.

Before Chief Justice Byrne, Justices Theofanis and Ellis

Abated and Remanded

Filed: April 3, 2026

Do Not Publish

