

# Effective and Persuasive Appellate Advocacy

## Prosecution and Defense Perspectives

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### Tips from the State

- Know what the State can appeal:
  - TCCP Art. 44.01 lists specific circumstances where the State may appeal
  - The State may also appeal a trial court order that has the effect of a circumstance listed in Art. 44.01(a), regardless of the language used in the order

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## Tips from the State

- Know what the State can appeal:
  - The trial court's order must be in writing to be appealable; an oral recitation in the record will not suffice
  - If the trial court refuses to enter a written order, your remedy is a petition for a writ of mandamus

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## Tips from the Defense

- Under TCCP 44.02 and TRAP 25.2(a)(1), defendants are broadly permitted to appeal trial courts' orders, rulings, and judgments.
- TRAP are Liberally Construed: The Court of Criminal Appeals has instructed that "[t]he Rules of Appellate Procedure should be construed reasonably, yet liberally, so that the right of appeal is not lost by imposing requirements not absolutely necessary to effect the purpose of a rule." *Harkcom v. State*, 484 S.W.3d 432, 434 (Tex. Crim. App. 2016).

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## Tips from the Defense

Generally, a criminal defendant may only appeal from a final judgment, thus a final judgment and sentence is a prerequisite to appellate jurisdiction. A Court of appeals does not have jurisdiction to review interlocutory orders unless that jurisdiction has been expressly granted by law

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## Tips from the Defense

### Defense Opportunities for Interlocutory Appeal are Extremely Limited

- The accused may challenge the State's power to restrain him at all.
- The accused may challenge the manner of his pretrial restraint, *i.e.*, the denial of bail or conditions attached to bail.
- The accused may raise certain issues which, if meritorious, would bar prosecution or conviction. Ex parte Smith, 178 S.W.3d 797, 801 (Tex. Crim. App. 2005)

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