IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. PD-0867-18

TROY ALLEN TIMMINS, Appellant

v.

THE STATE OF TEXAS

ON APPELLANT'S PETITION FOR DISCRETIONARY REVIEW FROM THE FOURTH COURT OF APPEALS BANDERA COUNTY

KEASLER, J., delivered the opinion for a unanimous Court.

O P I N I O N

When a trial judge informs a defendant that his bond is revoked, but allows him to report to the county jail later that day, can the defendant really be said to have been "released from custody" in contemplation of our bail-jumping statute?[1] And if the defendant does not report to the jail as ordered, has he "fail[ed] to appear in accordance

[1] *See* TEX. PENAL CODE § 38.10(a).

with the terms of his release"?[2] We answer both questions "yes." We therefore affirm the court of appeals' judgment that held accordingly.

I. BACKGROUND

Troy Allen Timmins was on bond for two felony offenses. At a pretrial hearing at which Timmins was personally present, the trial judge revoked Timmins's bond for testing positive for methamphetamine. Ordinarily, when a trial judge revokes a defendant's bond in open court for violating a bond condition, the defendant is "immediately returned to custody."[3] But in this case, Timmins pleaded with the trial judge to let him escort his elderly mother home before taking him into custody. The judge graciously obliged. He revoked Timmins's bond, but allowed Timmins to turn himself in at the Bandera County Jail by three o'clock that afternoon. The judge warned Timmins that if he did not report to the Bandera County Jail as ordered, he would "pick[] up a new felony in each of these cases." The warning did not work; Timmins never reported to the Bandera County Jail.

The State charged Timmins with bail jumping or failure to appear under Section 38.10(a) of the Texas Penal Code. That statute provides:

> A person lawfully released from custody, with or without bail, on condition that he subsequently appear commits an offense if he intentionally or knowingly fails to appear in accordance with the terms of his release.[4]

Accordingly, the indictment alleged that

> on or about September 19, 2016, [Timmins] did then and there, after being

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[2] *See id.*

[3] *See* TEX. CODE CRIM. PROC. art. 17.40(b).

[4] TEX. PENAL CODE § 38.10(a).

> lawfully released from custody without bail on a pending felony charge on condition that he subsequently appear in the Bandera County Jail on or before 3:00 p.m. September 19, 2016 . . . intentionally or knowingly fail[] to appear in accordance with the terms of his release.

A Bandera County jury convicted Timmins of this offense and sentenced him to twenty years' confinement.

Timmins appealed. By way of challenging the sufficiency of the evidence supporting his conviction, Timmins argued that his conduct did not meet the statutory definition of bail jumping or failure to appear. First, Timmins argued that at the time of the offense, he was not "a person lawfully released from custody." He also argued that, whatever his failure to report to the Bandera County Jail may have amounted to, it did not amount to a failure to "appear" in contemplation of Penal Code Section 38.10(a). The court of appeals rejected both arguments and, after modifying the trial court's judgment to delete the assessment of attorney's fees, otherwise affirmed Timmins's conviction.[5]

Timmins filed a petition for discretionary review in this Court. He contends that, on both prongs of his sufficiency challenge, the court of appeals has misinterpreted the scope of Penal Code Section 38.10. We granted the petition to examine (1) whether, by allowing Timmins to drive his mother home and self-report to the Bandera County Jail, the trial court actually "released [Timmins] from custody," and (2) whether, by failing to report to the Bandera County Jail as ordered, Timmins "failed to appear in accordance with the

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[5] *Timmins v. State*, 560 S.W.3d 671, 681 (Tex. App—San Antonio 2018).

terms of his release."[6]

II. LAW

"It is axiomatic that, in gauging the legal sufficiency of the evidence to support a particular criminal conviction, reviewing courts are obliged to view all of the evidence in the light most favorable to the jury's verdict, in deference to the jury's institutional prerogative to resolve all contested issues of fact and credibility. But sometimes appellate review of legal sufficiency involves simply construing the reach of the applicable penal provision in order to decide whether the evidence, even when viewed in the light most favorable to conviction, actually establishes a violation of the law."[7] This is one such occasion.

When we construe a statute, we begin by examining its text in the context in which it appears.[8] If this examination reveals a meaning that should have been plain to the legislators who voted on the statute, we ordinarily give effect to that meaning.[9] We will look beyond the statute's text and context to discern its meaning in only two situations. We will do so when the text does not bear a plain contextual meaning, that is, when the text is reasonably susceptible to more than one understanding, and we will do so when the

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[6] *See* TEX. PENAL CODE § 38.10(a).

[7] *Delay v. State*, 465 S.W.3d 232, 235 (Tex. Crim. App. 2014) (citations omitted).

[8] *See, e.g.*, *Boykin v. State*, 818 S.W.2d 782, 785 (Tex. Crim. App. 1991); *see also id.* at 786 (citations omitted) ("[S]tatutory text must be understood in context.").

[9] *Id.* at 785 (citing *Smith v. State*, 789 S.W.2d 590, 592 (Tex. Crim. App. 1990)).

text's unambiguous meaning would lead to "absurd consequences that the Legislature could not possibly have intended."[10]

III. ANALYSIS

A. "A person lawfully released from custody."

The first issue we must decide is whether, at the time of the alleged offense, Timmins had the status of "a person lawfully released from custody." Timmins does not challenge the lawfulness of the trial judge's decision to let him escort his mother home after revoking his bond. But he does question whether the trial judge actually "released [him] from custody" in contemplation of our bail-jumping statute.[11] To avoid begging this question, we will refer to the judge's order permitting Timmins to take his mother home as a "furlough" (rather than a "release").

As relevant here, Penal Code Section 38.01(1) defines "custody" for Chapter 38 purposes as being "under arrest by a peace officer or under restraint by a public servant pursuant to an order of a court of this state or another state of the United States."[12] We have previously held that a person may be in "custody" for Chapter 38 purposes even if he is not under "actual, physical, hands-on restraint."[13] A reviewing court must therefore

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[10] *See Boykin*, 818 S.W.2d at 785 (italics omitted); *see also Baird v. State*, 398 S.W.3d 220, 229 (Tex. Crim. App. 2013).

[11] *See* TEX. PENAL CODE § 38.10(a).

[12] *Id.* § 38.01(1)(A).

[13] *See Harrell v. State*, 743 S.W.2d 229, 231 (Tex. Crim. App. 1987).

"look at the legal status of the individual" to determine whether he was in custody at the time of the alleged offense.[14] So, for example, if someone has the "legal status . . . of an arrestee," a factfinder can rationally conclude that he was in Chapter 38 custody for the duration of that status, regardless of whether he was physically restrained.[15]

With that in mind, here is the gist of Timmins's argument: Although the furlough gave Timmins some additional freedom to move about, it nevertheless left some restraint on his freedom of movement. So, even though Timmins was not under actual, physical, hands-on restraint at the time of the alleged offense, his legal status was that of a person under a trial court's "constructive custody."[16] And because the furlough left Timmins in some form of custody, the trial judge cannot be said to have "released" Timmins from custody when he granted it. Accordingly, Timmins argues that the State ought to have charged him with escaping from custody under Penal Code Section 38.06(a)—not bail jumping.[17] According to Timmins, bail jumping can occur only when the defendant is released from all forms of custody, direct and constructive.

Taken to its logical conclusion, Timmins's argument would mean that a person

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[14] *Id.* (citations omitted).

[15] *Id.*

[16] *See constructive custody*, BLACK'S LAW DICTIONARY (11th ed. 2019) ("Custody of a person (such as a parolee or probationer) whose freedom is controlled by legal authority but who is not under direct physical control.").

[17] *See* Appellant's Brief on the Merits at 16–18 (referencing *In re B.P.C.*, No. 03-03-00057-CV, 2004 WL 1171670 (Tex. App—Austin May 27, 2004) (mem. op., not designated for publication)).

admitted to bail can be said to have been "released from custody" only when his bond conditions leave absolutely no restriction on his freedom of movement. But that is a contradiction in terms. Bail always imposes a restriction on the bailed person's freedom of movement—the restriction that, on certain days, the bailed person cannot go wherever he pleases. On certain days, to be determined by the trial judge and his staff, the bailed person must bring himself back to the courthouse to work toward concluding the matter that brought him there in the first place.[18] That being the case, construing the phrase "released from custody" the way that Timmins proposes would lead to an absurd outcome that the Legislature could not possibly have intended.[19] Nobody could ever be prosecuted under Section 38.10(a), because nobody freed from jail "on condition that he subsequently appear" could ever be said to have been "released" from custody.[20] The "condition that he subsequently appear" would mean that the bailed person was not released from all forms of custody. He would remain in the trial court's constructive custody, and therefore, the bail jumping statute would not apply. That would render the statute useless.

Even if we are wrong that bail necessarily imposes a restriction on a person's freedom of movement, Timmins's argument would still lead to implausible, if not absurd, outcomes in cases in which the bond conditions themselves restrict the bailed person's

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[18] *See, e.g.*, TEX. CODE CRIM PROC. art. 17.01 ("Bail is the security given by the accused that he will appear and answer before the proper court the accusation brought against him.").

[19] *See Boykin*, 818 S.W.2d at 785.

[20] *See* TEX. PENAL CODE § 38.10(a).

freedom of movement. To take but one of many possible examples, consider a defendant charged with stalking.[21] The Code of Criminal Procedure authorizes a magistrate setting that defendant's bond to prohibit him, as a condition of his release, from going "to or near the residence, place of employment, or business of the victim."[22] A bond condition preventing the defendant from going to or near the victim's house undoubtedly restricts his freedom of movement. If Timmins is right that this restraint means that the defendant was never really "released from custody," then this defendant would be immune from prosecution under Penal Code Section 38.10(a). That outcome strains credulity.

To account for this, we conclude that the phrase "released from custody" must include incremental or incomplete releases—that is, a trial judge's modifying a person's custodial status from more-restrictive to less-restrictive. When a judge frees a person from a more-restrictive form of custody "on condition that he subsequently appear," but leaves some restrictions on the person's freedom of movement, the judge can still rationally be said to have "released" that person from custody.[23] That the judge decided to keep the person in his or her "constructive custody," whatever that may entail on a case-by-case basis, does not negate this fact.

Under this understanding, on the facts of this case, a factfinder could rationally

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[21] *See* TEX. PENAL CODE § 42.072.

[22] *See* TEX. CODE CRIM. PROC. art. 17.46.

[23] *Accord Timmins*, 560 S.W.3d at 675 ("Thus, a person may be 'released' from custody under [S]ection 38.10 when the person is freed from a prohibition or limitation on one's action.").

conclude that when he absconded, Timmins was "a person lawfully released from custody."[24] Even if Timmins is right that the terms of the furlough left him in the trial court's constructive custody, the trial judge nevertheless released him from a more-restrictive form of custody by granting him a furlough at all. Timmins's argument in this regard is therefore overruled. We need not, and so shall not, comment on Timmins's argument that his conduct met the definition of "escape" under Penal Code Section 38.06(a), and that escape and failure to appear are mutually exclusive offenses.

B. ". . . to appear in accordance with the terms of his release."

Timmins also argues that his failure to report to the Bandera County Jail did not amount to a failure to "appear" in contemplation of Penal Code Section 38.10. Whether this is so depends on the meaning of the word "appear" in Section 38.10(a). Other subsections of Section 38.10, including the defense outlined in subsection (b), use the noun, "appearance," instead of the verb, "appear."[25] We will use the words "appear" and "appearance" interchangeably in the analysis that follows, as we conclude that they are grammatical variations of the same idea.[26]

i. The competing constructions and the court of appeals' approach.

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[24] TEX. PENAL CODE § 38.10(a) (some capitalization altered).

[25] *See* TEX. PENAL CODE §§ 38.10(b), (e), (f).

[26] *See, e.g.*, *Ex parte Keller*, 173 S.W.3d 492, 498 (Tex. Crim. App. 2005) ("[A] word or phrase that is used within a single statute generally bears the same meaning throughout that statute."); *cf. also* TEX. PENAL CODE § 1.07(b) ("The definition of a term in this code applies to each grammatical variation of the term.").

Timmins posits that the words "appear" and "appearance" carry a narrow, technical meaning based on the way those words are commonly used in legal settings. He thus proposes that we construe the words to bear the meaning provided in Black's Law Dictionary: a person appears, or makes an appearance, when he "com[es] into court as a party or interested person."[27] Under Timmins's interpretation, a person runs afoul of Section 38.10(a) only when he fails to appear in this technical sense. And because this technical sense of the word implicitly limits appearances to courts of law, Timmins's failure to report to the Bandera County Jail did not constitute a failure to appear in contemplation of Penal Code Section 38.10(a).

The State, meanwhile, asks us to adopt a non-technical, "plain English" understanding of the word "appear." One possibility the State endorsed before the court of appeals, and at oral argument before this Court, was simply, "to show up."[28] Under the State's construction, then, Section 38.10(a) requires the released person "to show up"—to be physically present—whenever and wherever the releasing court ordered him to show up when the court released him from custody. If the State is correct, Timmins's failure to report to the Bandera County Jail did constitute a failure to "appear" in contemplation of our bail-jumping statute, because Timmins did not "show up" when and where the trial judge ordered him to show up when he released him from custody.

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[27] *See appearance*, BLACK'S LAW DICTIONARY (11th ed. 2019).

[28] *See Timmins*, 560 S.W.3d at 677 (citing WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 102 (Philip Babcock Gove *et al*. eds., 1981)).

Finally, the court of appeals noted that "appear" can also be used in a technical sense to mean "com[ing] formally before an authoritative body."[29] As we understand it, this construction would not limit appearances to courts of law. In this sense of the word, a person could rationally be said to "appear" before any authoritative body, including non-judicial entities. But, unlike the State's preferred construction, this interpretation would incorporate some requisite level of formality and authority. While a person might rationally be said to appear at a restaurant or movie theater in the sense of "show[ing] up" at those venues, he could not rationally be said to appear there in the sense of formally presenting himself to an authoritative body. Under this understanding, appearances would be limited to authoritative bodies—persons or groups of persons with authority to take some official action.

Faced with three facially plausible alternative interpretations, the court of appeals seems to have concluded that, even when read in context, the word "appear" in Section 38.10(a) is ambiguous.[30] It did so because it could find "no textual basis for either party's construction that would include or exclude the facts of the present case."[31] It therefore consulted certain extra-textual indicia of meaning, including the "purposes of Section 38.10," "other statutes on the same subject," and the "consequences of Timmins's

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[29] *Id.* (quoting WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 102 (Philip Babcock Gove et al. eds., 1981)).

[30] *See id.* at 678.

[31] *Id.*

construction," to best discern the sense in which the Legislature used the words "appear" and "appearance" in Section 38.10.[32] Weighing those factors, the court of appeals determined that Timmins's courtroom-only construction was disfavored.[33]

ii. Does the Code Construction Act compel a contrary result?

Ordinarily, when an interpreting court concludes that a word or phrase is ambiguous, the court is on safe jurisprudential footing to resort to extra-textual indicia of meaning to resolve the ambiguity. But when one of the candidate understandings would imbue the word with a technical meaning—would make it a "term of art"—the propriety of that approach is less clear. We have long preferred to construe words and phrases to bear their technical meanings, if any such meaning exists, so long as they are not plainly excluded by the surrounding text.[34] So we have said, in varying degrees of forcefulness, that words or phrases capable of technical use "are generally" given their technical meanings, "should" be given their technical meanings, or simply "will" be given their technical meanings.[35]

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[32] *Id*. at 678–81.

[33] *Id*. at 680.

[34] *E.g.*, *Medford v. State*, 13 S.W.3d 769, 772 (Tex. Crim. App. 2000) (citing 82 C.J.S. *Statutes* § 330 (1953)). *But see also Ramos v. State*, 303 S.W.3d 302, 307 (Tex. Crim. App. 2009) (rejecting a proposed technical construction because the context excluded it).

[35] *E.g.*, *Ramos*, 303 S.W.3d at 307 ("[T]erms that have acquired a technical meaning are generally construed in their technical sense.") (citing *Medford*, 13 S.W.3d at 771–72); *Ex parte Rieck*, 144 S.W.3d 510, 512 (Tex. Crim. App. 2004) ("Words should be defined in accordance with any technical or particular meaning acquired by legislative definition or otherwise") (citing TEX. GOV'T CODE § 311.011(b)); *Clinton v. State*, 354 S.W.3d 795,

The Code Construction Act (the Act) uses the strongest language in this regard. As Timmins notes, Government Code Section 311.011(b), a provision of the Act, says that "words and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, shall be construed accordingly."[36] Timmins understandably emphasizes the "shall" in this provision. "Shall" does not merely suggest or recommend that a thing be done—it commands it done. "Shall" imposes a duty.[37] Accordingly, Timmins argues that an interpreting court choosing between a technical construction and a common-use construction is duty-bound by the Act to resolve any uncertainty it has about the word's meaning in favor of the technical construction. So, Timmins concludes, as soon as the court of appeals acknowledged that "appear" can be used in a technical sense to mean "coming into court as a party or interested person," its analysis should have ended. By dint of the Act, the court of appeals should have resolved the ambiguity in favor of the technical meaning.

For two reasons, we disagree that the Code Construction Act resolves the interpretive issue before us. In the first place, the Penal Code itself limits the applicability of the Act to the interpretation of Penal Code provisions. Penal Code Section 1.05(b) says that some parts of the Act, including Government Code Section 311.011(b), apply to the

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800 (Tex. Crim. App. 2011) (stating that, if statutory terms have a technical meaning, "they will be construed consistent with that meaning") (citing *Medford*, 13 S.W.3d at 771–72).

[36] TEX. GOV'T CODE § 311.011(b).

[37] *Id.* § 311.016(2).

construction of the Penal Code. But it also contemplates that if "a different construction is required by the context," the interpreting court is not constrained to follow the Act.[38] This provision implicitly authorizes an interpreting court to adopt any contextually necessary construction, even if adhering to the Act would lead the court to adopt a different construction. So if we find that a non-technical construction is "required by the context," we need not reflexively opt for the technical construction by dint of the Act. We may go where the context leads us.

In the second place, Government Code Section 311.011(b) could inform our decision only if we were forced to choose between one technical construction and one common-use construction. Government Code Section 311.011(b) arguably commands an interpreting court to prefer a technical construction over any equally plausible common-use construction, but it does not tell a court how to decide between two equally plausible technical constructions. To be sure, Timmins's argument proceeds from the premise that there is but one technical understanding of the words "appear" and "appearance," and he urges us to favor that one technical understanding over the State's "plain English" understanding. But the fact that the parties have given us only these two constructions to consider does not necessarily mean that they represent the entire spectrum of meanings that those words can plausibly bear. As we have already noted, the court of appeals concluded that "appear" can be used in a technical sense that is broader than Timmins's preferred

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[38] *See* TEX. PENAL CODE § 1.05(b).

construction.[39] If that is so, then the most Government Code Section 311.011(b) would tell us is that we must reject the State's proposed common-use interpretation in favor of one of the remaining two technical constructions. It would not tell us how to decide between Timmins's narrow technical construction and the court of appeals' broader technical construction.

iii. Our solution.

We agree with the court of appeals that "appear" can be understood to mean "com[ing] formally before an authoritative body," so as not to limit formal appearances to courts of law.[40] Indeed, our research has revealed multiple instances in our Codes and Constitution where "appear" and "appearance" have been used in connection with non-judicial authorities. For example, Government Code Section 508.254(f) describes a hearing in front of the parole board as an "appearance."[41] Code of Criminal Procedure Article 24.01(a)(2) says that a subpoena may summon one or more persons "to appear" at a "coroner's inquest,"[42] which can be conducted by a medical examiner.[43] And the Texas Constitution provides that any "Justice or Judge" formally accused of misconduct shall be

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[39] *See Timmins*, 560 S.W.3d at 677 (quoting WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 102 (Philip Babcock Gove et al. eds., 1981)).

[40] *See appear*, WEBSTER'S NEW INTERNATIONAL DICTIONARY (3d ed. 2002).

[41] TEX. GOV'T CODE § 508.254(f).

[42] TEX. CODE CRIM. PROC. art. 24.01(a)(2)(B).

[43] *See* TEX. CODE CRIM. PROC. art. 49.25, § 12.

given notice and an opportunity to "appear . . . before" the Commission on Judicial Conduct.[44] Each of these individuals (a parolee, an inquest witness, and an accused Judge or Justice) is described as "appear[ing]" before the relevant body, but none of the relevant bodies is a court of law.

We also conclude that if "appear" means coming formally before an authoritative body, then Timmins's sufficiency challenge will fail. There is no disputing that the Bandera County Jail, acting through one of its representatives, was authorized to take some official action on Timmins: taking him into direct, physical custody. Timmins did not "come before" that body in any capacity, formal or otherwise. So, under the authoritative-body understanding of "appear," a rational factfinder could conclude that Timmins failed to appear in accordance with the terms of his release. The trial judge ordered Timmins to come formally before a specific authoritative body by three o'clock that afternoon, and Timmins failed to do so.

Because Timmins's is the only construction under which his sufficiency challenge could even theoretically succeed, it follows that to resolve that challenge, we need only decide whether Timmins's courtroom-only technical understanding is a permissible construction in context. If it is not, then whatever "appear" and "appearance" may ultimately mean, those words will be broad enough to cover Timmins's conduct in this

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[44] TEX. CONST. art. 5, § 1-a (6).

case. We need not decide, as the court of appeals seems to have done,[45] whether the authoritative-body construction would give the word "appear" a technical meaning. Whether that is so may inform the choice between the authoritative-body construction and the State's "show-up-wherever" construction,[46] but it does not inform whether Timmins's courtroom-only technical understanding is a permissible construction in context. For three reasons, each inhering in the text and context of Section 38.10, and none of which involves examining extra-textual indicia of meaning, we can exclude Timmins's narrow technical understanding as a possibility.

The first is the defense outlined in Section 38.10(b). That subsection provides, "It is a defense to prosecution under this section that the appearance was incident to community supervision, parole, or an intermittent sentence."[47] The fact that parole appearances are included in the scope of this defense is telling. As the court of appeals observed, "when a defendant violates a condition of parole, a judicial proceeding is not required because parole revocation involves an administrative hearing before the board of pardons and paroles."[48] If it were true that "appear" in Section 38.10(a) is limited by definition to courtroom proceedings, it would not be necessary to include parole

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[45] *See Timmins*, 560 S.W.3d at 677 ("Technically, 'appear' may also be defined more broadly as 'to come formally before an authoritative body.'") (citations omitted).

[46] *See* TEX. GOV'T CODE § 311.011(b).

[47] TEX. PENAL CODE § 38.10(b).

[48] *Timmins*, 560 S.W.3d at 677–78 (citing TEX. GOV'T CODE §§ 508.251, 508.281).

appearances within the purview of subsection (b). For, under that understanding, if a person were prosecuted for failing to "appear at" a parole hearing, he would not need to claim a separate statutory defense. The fact that his absence pertained to a non-judicial proceeding would suffice to absolve him of that charge. So, because Timmins's construction would render at least one part of the subsection (b) defense superfluous, it is disfavored.[49]

The second reason we reject Timmins's favored construction is Section 38.10's statutory history.[50] Section 38.10 has been in the Texas Penal Code since the Code went into effect, in 1974. It was originally codified as Penal Code Section 38.11.[51] Before that, the offense of "Failure to appear; violation of bail bond" was found in Article 22.01a of the Code of Criminal Procedure. It read:

> Whoever, having been admitted to bail for appearance before any court of record of this state, incurs a forfeiture of the bail and knowingly and willfully fails to surrender himself within 30 days following the date of such forfeiture, shall, if the bail was given in connection with a charge of felony or pending appeal after conviction of any offense, be fined not more than $2,000.00 or imprisoned in the penitentiary not more than two years, or both; or, if the bail was given in connection with a charge of committing a misdemeanor, or for appearance as a witness, be fined not more than $500.00 or imprisoned in the

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[49] *E.g.*, *Yazdchi v. State*, 428 S.W.3d 831, 837 (Tex. Crim. App. 2014) ("We . . . presume that every word in a statute has been used for a purpose and that each word, phrase, clause and sentence should be given effect if reasonably possible.") (cleaned up).

[50] *See* ANTONIN SCALIA & BRYAN GARNER, READING LAW: THE INTERPRETATION OF LEGAL TEXTS 256 (2012) (defining "statutory history" as "the statutes repealed or amended by the statute under consideration" and explaining that statutory history "form[s] part of the context of [a] statute").

[51] *See* TEX. PENAL CODE § 38.11 (1974).

county jail not more than one year, or both.[52]

The phrase "appearance before" in this statute might suggest that the word "appearance" was used in a technical sense. But it cannot have been used in the narrowest, courtroom-only technical sense, or else the immediately following phrase "any court of record in this state" would have been redundant.[53] While Penal Code Section 38.10 differs from former Article 22.01a in many ways, we see no textual or contextual indication that the word "appearance" itself has a different meaning now than it did previously. As far as "appearances" are concerned, the only change the Legislature made was to substitute the narrowing phrase "appearance before any court of record of this state" with the broader phrase "appear in accordance with the terms of his release."

The third and final reason to reject Timmins's courtroom-only construction is a statute that we have already held to be *in pari materia* with Penal Code Section 38.10: Transportation Code Section 543.009. Subsection (b) of that statute provides: "A person who wilfully violates a written promise to appear in court, given as provided in this subchapter, commits a misdemeanor regardless of the disposition of the charge on which the person was arrested."[54] Subsection (a) allows an arrestee to "comply with a written promise to appear in court by an appearance by counsel."[55]

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[52] TEX. CODE CRIM. PROC. art. 22.01a (1967).

[53] *E.g.*, *Ortiz v. State*, 93 S.W.3d 79, 87 (Tex. Crim. App. 2002) ("In interpreting statutes, we seek to avoid redundancies[.]") (citations omitted).

[54] TEX. TRANSP. CODE § 543.009(b).

[55] *Id.* § 543.009(a).

> In *Azeez v. State*, we explained what it means for two statutes to be *in pari materia*:
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> > It is a settled rule of statutory interpretation that statutes that deal with the same general subject, have the same general purpose, or relate to the same person or thing or class of persons or things, are considered to be *in pari materia* though they contain no reference to one another, and though they were passed at different times or at different sessions of the legislature.
> >
> > In order to arrive at a proper construction of a statute . . . all acts and parts of acts *in pari materia* will . . . be taken, read, and construed together, each enactment in reference to the other, as though they were parts of one and the same law. Any conflict between their provisions will be harmonized, if possible, and effect will be given to all the provisions of each act if they can be made to stand together and have concurrent efficacy.[56]

Having already decided that Transportation Code Section 543.009 is *in pari materia* with Penal Code Section 38.10, we conclude that whatever "appear" and "appearance" mean in Transportation Code Section 543.009, those words must bear the same meaning in Penal Code Section 38.10.

Because Transportation Code Section 543.099(a) says that a person can honor his promise to appear "by an appearance by counsel," the words "appear" and "appearance" may bear a technical meaning there—something other than just showing up.[57] But even if they do bear a technical meaning by dint of subsection (a), subsection (b) clearly forecloses the narrow, courtroom-only understanding of those words. Once again, if the words

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[56] *Azeez v. State*, 248 S.W.3d 182, 191–92 (Tex. Crim. App. 2008) (citing *Cheney v. State*, 755 S.W.2d 123, 126 (Tex. Crim. App. 1988)).

[57] *See also* TEX. CODE CRIM. PROC. art. 45.0201 (stating that under some circumstances, justice and municipal court judges "may allow the defendant to appear by telephone or videoconference").

"appear" and "appearance" in Transportation Code Section 543.009 are implicitly limited to courtroom settings, then the phrase immediately following the word "appear" in subsection (b)—"in court"—would be redundant. As a result, that construction is disfavored.[58] So, given the *in pari materia* connection between Section 543.009 and Section 38.10, if "appear" is not limited to courtrooms in Section 543.009, then neither is it limited to courtrooms in Section 38.10.

IV. CONCLUSION

Whether or not the words "appear" and "appearance" in Penal Code Section 38.10 bear a technical meaning, they do not bear the narrow, courtroom-restrictive technical meaning that Timmins proposes. They either bear the State's common-use meaning, or they bear an authoritative-body meaning that, whether it is a technical construction or a common-use construction, is broad enough to cover Timmins's conduct in this case. We leave for another day the task of further winnowing the meaning of those words, should the need arise.[59]

We affirm the court of appeals' judgment.

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[58] *Ortiz*, 93 S.W.3d at 87.

[59] *See Timmins*, 560 S.W.3d at 681 (observing that the facts of this case "do not present a paradigmatic example of a failure to appear") (citations omitted).