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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

COUNTY OF LOS ANGELES,

Plaintiff and Appellant,

v.

UNITED STATES FIRE  
INSURANCE COMPANY,

Defendant and Respondent.

B260173

(Los Angeles County  
Super. Ct. No. SJ3947)

APPEAL from an order of the Superior Court of Los Angeles County, David R. Fields, Judge. Reversed.

Mary C. Wickham, County Counsel, Ruben Baeza, Jr., Assistant County Counsel, Brian Chu, Principal Deputy County Counsel, and Lindsay Yoshiyama, Deputy County Counsel, for Plaintiff and Appellant.

John M. Rorabaugh for Defendant and Respondent.

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## INTRODUCTION

Forfeiture of bail is governed by Penal Code sections 1305 through 1308.<sup>1</sup> These sections provide that when a defendant facing criminal charges is released on bail and fails to appear as ordered or as otherwise required without sufficient excuse, a trial court must declare the bail bond forfeited. (§ 1305, subd. (a) (section 1305(a)).) Under section 1305, a defendant is required to appear at arraignment, trial, judgment, and “[a]ny other occasion” where the “defendant’s presence in court is lawfully required.” (*Ibid.*) Section 977, subdivision (b)(1) (section 977(b)(1)), which does not specifically govern bail forfeiture proceedings, provides that a felony defendant must be present at five specified proceedings and “at all other proceedings” unless he or she has properly executed a written waiver. The question here is whether, in the absence of a written waiver, section 977(b)(1)’s requirement that the defendant appear “at all other proceedings” means that, for purposes of section 1305(a), the defendant’s presence in court is lawfully required at a pretrial hearing in the absence of a court order that the defendant appear at the hearing.

The trial court here concluded that the defendant’s presence was not required at a pretrial hearing in the absence of a court order that he appear. On this basis, it granted a motion by respondent United States Fire Insurance Company (US Fire) to set aside the summary judgment entered in favor of appellant County of Los Angeles (County), forfeiting US Fire’s bond. The

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<sup>1</sup> Unless otherwise specified, all statutory references are to the Penal Code.

County appeals.<sup>2</sup> Based on the recent opinion by the California Supreme Court in *People v. Safety National Casualty Corp.* (2016) 62 Cal.4th 703 (*Safety National*), we reverse.

## FACTUAL AND PROCEDURAL BACKGROUND

Mario Carreno (Carreno) was arrested and posted bail in the amount of \$50,000 on December 21, 2012. On May 15, 2013, he was charged by information with possession or purchase for sale of a controlled substance (Health & Saf. Code, § 11351), possession for sale (*id.*, § 11378), possession while armed with a firearm (*id.*, § 11370.1, subd. (a)), and possession of a firearm by a felon (§ 29800, subd. (a)(1)). When the case was called for trial on August 23, 2013, Carreno failed to appear. The court ordered bail forfeited and issued a bench warrant.

Carreno appeared in court on October 1, 2013. The trial court informed him: “You are here because you were arrested on a warrant on August 23. It was a case going to trial and you were not here. You are back with us [a] couple of months later.

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<sup>2</sup> US Fire contends the notice of appeal was untimely under California Rules of Court, rule 8.108(c), which applies to appeals from a motion to vacate judgment. US Fire argues that under that rule the County was required to file the notice of appeal within 90 days of the filing of the motion to vacate, and, here, the County filed on the 91st day. US Fire misconstrues the applicable rules relating to the timing of an appeal. Because the motion to vacate was granted, the judgment vacated and a new order exonerating bail entered, the appeal was properly taken from that order. The appeal was filed within 60 days of notice of entry of that order, and thus is timely under California Rules of Court, rule 8.104(a)(1).

Your trial date is reset for December 2 . . . .” Carreno’s counsel requested a pretrial hearing date of October 28, and the trial court responded: “Yes. October 28, pretrial. Bench warrant is recalled and quashed. Bail set at \$100,000. Bond exonerated.” Although the minute order for the hearing states that “[t]he court orders the defendant to appear on the next court date,” the reporter’s transcript of the hearing does not reflect such an order.

On October 9, 2013, US Fire posted a bail bond in the amount of \$100,000. The bail bond states that Carreno was “admitted to bail in the sum of One Hundred Thousand Dollars (\$100,000) and ordered to appear in the above-entitled court on 10 28 2013 [at] 8:30 am.”

Carreno was not present at the October 28, 2013 pretrial hearing, although his counsel was present. The court ordered bail forfeited and issued a bench warrant. Notice of forfeiture was mailed to US Fire on October 30.

On July 2, 2014, the court entered summary judgment against US Fire in the amount of the bond plus court costs on the grounds the bond was ordered forfeited, and the time for filing a motion to set aside the forfeiture had elapsed without the forfeiture having been set aside. The clerk sent US Fire notice of entry of judgment and a demand for payment.

US Fire filed a motion to set aside the summary judgment, discharge the forfeiture and exonerate bail on August 18, 2014. The basis for the motion was that the court lacked jurisdiction to enter summary judgment because Carreno was not required to appear at the October 28, 2013 hearing. The County opposed the motion on the ground Carreno was, in fact, required to appear at the hearing.

At the October 24, 2014 hearing on the motion, the trial court agreed with US Fire, noting that the bail bond was “more of a contractual relationship in terms of [Carreno] having to come [to court], as opposed to a court order and [there] was no court order in this case.” The court granted the motion to set aside the summary judgment, vacated the bail forfeiture, and ordered the bail exonerated.

## DISCUSSION

In *Safety National*, the defendant, who was released on bail, was present when the trial court set a date for the pretrial hearing. The defendant did not appear at the hearing, and the court ordered that bail be forfeited. The surety moved to vacate the bail forfeiture on the ground the trial court lacked jurisdiction to declare a forfeiture, in that the defendant had not been ordered to appear at the pretrial hearing. The trial court denied the motion, but the appellate court reversed, holding that section 977(b)(1) did not create an obligation to appear at the pretrial hearing for purposes of bail forfeiture proceedings. (*Safety National, supra*, 62 Cal.4th at pp. 708-709.)

The Supreme Court began its analysis of the issue by observing that “[t]he forfeiture of bail and related proceedings are a matter of statutory procedure governed by sections 1305 through 1308. [Citation.] ‘The object of bail and its forfeiture is to insure the attendance of the accused and his obedience to the orders and judgment of the court.’ [Citation.] ‘While bail bond proceedings occur in connection with criminal prosecutions, they are independent from and collateral to the prosecutions and are civil in nature.’ [Citation.] In that regard, the bail bond itself is

a “contract between the surety and the government whereby the surety acts as a guarantor of the defendant’s appearance in court under the risk of forfeiture of the bond.” [Citation.] When a defendant who posts bail fails to appear at a scheduled hearing, the forfeiture of bail implicates not just the defendant’s required presence, but constitutes a ‘breach of this contract’ between the surety and the government. [Citation.] Ultimately, if the defendant’s nonappearance is without sufficient excuse, it is the surety who ‘must suffer the consequences.’ [Citation.]” (*Safety National, supra*, 62 Cal.4th at p. 709.)

Section 1305(a) requires the trial court to declare a bail forfeiture “if, without sufficient excuse, a defendant fails to appear for any of the following: [¶] (1) Arraignment. [¶] (2) Trial. [¶] (3) Judgment. [¶] (4) *Any other occasion prior to the pronouncement of judgment if the defendant’s presence in court is lawfully required.* [¶] (5) To surrender himself or herself in execution of the judgment after appeal.” (*Safety National, supra*, 62 Cal.4th at p. 710.) The defendant’s failure to appear at one of these proceedings and the lack of sufficient excuse are “jurisdictional prerequisites” which “must be met before the trial court may declare a forfeiture.” (*Ibid.*)

“For purposes of section 1305(a), a defendant’s presence may be deemed ‘lawfully required’ when a specific court order commands his or her appearance at a date and time certain [citations], or when a defendant has actual notice of a mandatory appearance—even without a court order—because he or she was present when the date and time of the appearance was set [citation]. [Citation.]” (*Safety National, supra*, 62 Cal.4th at p. 710.) Appearance at pretrial hearing is not mandatory under section 1305(a). The question before the court was whether a

defendant's "appearance at a scheduled pretrial hearing could be 'lawfully required' by another provision of law, namely, section 977(b)(1)." (*Safety National*, at p. 710.)

Section 977 protects a defendant's constitutional right to be present at the proceedings against him. (*Safety National*, *supra*, 62 Cal.4th at p. 711.) At the time in question, "section 977(b)(1) provided: 'In all cases in which a felony is charged, the accused shall be present at the arraignment, at the time of plea, during the preliminary hearing, during those portions of the trial when evidence is taken before the trier of fact, and at the time of the imposition of sentence. The accused shall be personally present at all other proceedings unless he or she shall, with leave of court, execute in open court, a written waiver of his or her right to be personally present . . . .' [Citation.]" (*Id.* at pp. 710-711, fn. omitted.)<sup>3</sup>

The surety contended that the requirement that the accused be present "at all other proceedings" "does not compel a defendant to appear—and consequently, does not mandate a waiver of personal presence—at noncritical proceedings, i.e., where the defendant's fundamental constitutional rights are not

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<sup>3</sup> Section 977(b)(1) currently provides: "Except as provided in subdivision (c), in all cases in which a felony is charged, the accused shall be personally present at the arraignment, at the time of plea, during the preliminary hearing, during those portions of the trial when evidence is taken before the trier of fact, and at the time of the imposition of sentence. The accused shall be personally present at all other proceedings unless he or she shall, with leave of court, execute in open court, a written waiver of his or her right to be personally present, as provided by paragraph (2). . . ."

at stake. [Citations.]” (*Safety National, supra*, 62 Cal.4th at p. 711.) The People claimed, however, that the language of section 977(b)(1) “makes no such distinction, but instead makes clear that a felony defendant’s presence is required at every scheduled pretrial hearing unless he or she has executed a written waiver; there is no basis to ‘exempt hearings where jurisdiction over a bail bond is at issue.’” (*Safety National*, at pp. 711-712.)

The Supreme Court “agree[d] with the People that the statutory term ‘at all other proceedings’ does not distinguish between critical and noncritical proceedings. (§ 977 (b)(1).) To the contrary, the broadly phrased term suggests the provision’s reach is inclusive, i.e., subsuming those court proceedings not specifically listed in section 977.” (*Safety National, supra*, 62 Cal.4th at p. 712.) The court examined the legislative history of section 977 and case law analyzing the section. (*Safety National*, at pp. 712-714.) It then noted that “[n]owhere is the obligatory nature of a defendant’s presence at court proceedings more apparent than in the bail bond context. The very purpose of bail and its forfeiture is to ensure the defendant’s attendance and obedience to the orders and judgment of the court. [Citations.] “In general the state and surety agree that if the state will release the defendant from custody, the surety will undertake that *the defendant will appear personally and at a specified time and place . . . .* If the defendant fails to appear at the proper time and place, the surety becomes the absolute debtor of the state for the amount of the bond.” [Citation.] Put another way, ‘every forfeiture involves the conduct of the [defendant] bailee rather than the surety. That is the nature of the agreement between the state and the bondsman. The state relinquishes custody of the



bailee to the bondsman in return for the assurance that a certain sum will be paid by the surety because of the conduct of nonappearance by the bailee.’ [Citations.] Thus, when a defendant has posted bail, both the defendant and the surety have assumed the responsibility and obligation to ensure his or her presence at all requisite court proceedings, such as those covered by section 977(b)(1).” (*Id.* at pp. 714-715.)

The court saw no basis for limiting section 977’s application to only critical proceedings. Case law established that “section 977 may require a defendant’s presence at a specific court proceeding, even if the Constitution would allow the proceeding to continue in his or her absence. [Citation.] Section 977(b)(1), though designed to implement a defendant’s right to be present, also serves an important public interest. The efficient functioning of the criminal justice system is enhanced by compelling a defendant’s appearance at critical portions of his or her case, and by requiring the court-authorized written waiver at other covered proceedings to foreclose any doubt whether to proceed in the defendant’s absence. (§ 977, subd. (b).) Similarly, in the bail bond context, a defendant’s required presence serves another purpose beyond guaranteeing the right to be present: ‘[T]he broad definition of bail implies its purpose to be that of a tool to assure the ability of society to protect itself by lawfully conducted criminal prosecution.’ [Citation.] In other words, construed together section 977(b)(1) and section 1305 ‘are not only compatible with the constitutional guarantee of due process, but also constitute an appropriate legislative design to assure the orderly administration of the judicial process.’ [Citation.]” (*Safety National, supra*, 62 Cal.4th at pp. 715-716.) The court thus concluded “that for purposes of section 1305, a defendant’s

presence at an ‘other proceeding[]’ under section 977(b)(1) constitutes a ‘lawfully required’ appearance for which his or her unexcused absence may justify the forfeiture of bail.” (*Safety National, supra*, 62 Cal.4th at p. 716, fn. omitted.)

The court further concluded that a pretrial hearing constitutes one of the “other proceedings” at which a defendant’s presence is required under section 977(b)(1). (*Safety National, supra*, 62 Cal.4th at p. 716.) Because the defendant did not appear at the pretrial hearing, did not execute a written waiver of his right to be present, and had no sufficient excuse for his absence under section 1305, the court concluded his absence from the pretrial hearing justified a bail forfeiture. (*Safety National*, at p. 717.)

*Safety National* compels the same conclusion here. Carreno failed to appear at the October 28, 2013 pretrial hearing; there is nothing in the record to indicate that he executed a written waiver of his right to be present; and he provided no sufficient excuse for his absence. Further, he had actual notice of the October 28 hearing, as he was physically present in court when that pretrial hearing was set. The court hearing his case therefore had a basis and jurisdiction to declare a bail forfeiture. (*Safety National, supra*, 62 Cal.4th at pp. 710, 717.) The trial court therefore erred in granting US Fire’s motion to set aside the summary judgment on the ground the court was without jurisdiction to declare a bail forfeiture.

## **DISPOSITION**

The order is reversed. The County is to recover its costs on appeal.

KEENY, J.\*

We concur:

ZELON, Acting P. J.

SEGAL, J.

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\* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.