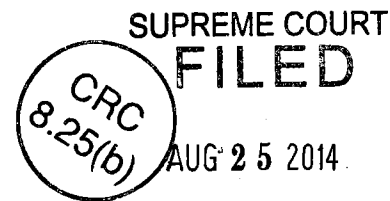


S218712



IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

Frank A. McGuire Clerk

Deputy

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff-Respondent,

v.

SAFETY NATIONAL CASUALTY INSURANCE COMPANY,
Defendant-Appellant.

After a Decision by the Court of Appeal,
Second Appellant District, Division Eight
Case No. B243773 (LASC No. LA066432)

OPENING BRIEF ON THE MERITS

OFFICE OF THE COUNTY COUNSEL
RUBEN BAEZA, JR., Assistant County Counsel
BRIAN T. CHU, Principal Deputy County Counsel
State Bar No. 161900
JOANNE NIELSEN, Principal Deputy County Counsel
State Bar No. 181698
648 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012-2713
Tel: (213) 974-1876
Fax: (213) 687-8822
E-mail: jnielsen@counsel.lacounty.gov

Attorneys for Plaintiff-Respondent People of the State of California
by the County of Los Angeles

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500 West Temple Street
Los Angeles, California 90012-2713
Tel: (213) 974-1876
Fax: (213) 687-8822
E-mail: jnielsen@counsel.lacounty.gov

Attorneys for Plaintiff-Respondent People of the State of California
by the County of Los Angeles

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I. ISSUE FOR REVIEW

Penal Code §977(b) requires a defendant charged with a felony to be personally present at certain specified hearings and at all other proceedings unless he has executed a waiver. Penal Code §1305(a)(4) requires a court to forfeit bail if, without sufficient excuse, a defendant fails to appear when "the defendant's presence in court is lawfully required." If a defendant's presence is required under §977(b), but the defendant is not present nor has he executed a waiver, is bail properly forfeited under §1305? In other words, does Penal Code §977(b) apply to bail forfeiture proceedings under §1305 when a felony defendant has not executed a waiver and is not present in court?

II. SUMMARY OF ARGUMENT

The rules governing bail bond forfeitures are based on sections of the Penal Code. Under Penal Code §1305(a),¹ a defendant is required to

¹ All statutory references are to the Penal Code unless otherwise specified. Section 1305(a) states:

A court shall in open court declare forfeited the undertaking of bail or the money or property deposited as bail if, without sufficient excuse, a defendant fails to appear for any of the following:

- (1) Arraignment.
- (2) Trial.
- (3) Judgment.

appear at certain specified court hearings and "any other occasion" before judgment is pronounced where the defendant's presence in court "is lawfully required." If he fails to appear as required, the court must order bail forfeited absent a sufficient excuse. The words "any other occasion" and "is lawfully required" expressly create a catch-all category of hearings at which a defendant must appear in order to avoid forfeiture of the bail. The question here is how these two phrases are defined and how they relate to other sections of the Penal Code. Specifically, how do those phrases relate to §977(b)(1),² which has similar language that mandates a felony

(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.

However, the court shall not have jurisdiction to declare a forfeiture and the bail shall be released of all obligations under the bond if the case is dismissed or if no complaint is filed within 15 days from the date of arraignment."

² Section 977, subdivision (b) states:

"(1) 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

defendant's appearance in court for certain specified hearings, and states the defendant "shall be personally present at all other proceedings." Thus, the question is whether §1305's "any other occasion" encompasses §977's "at all other proceedings."

Here, the Court of Appeal reversed the Superior Court's order denying the surety's motion to set aside the bail forfeiture; it held that a pretrial conference was not contemplated as a hearing at which the defendant was required to appear. The Court found that because a pre-trial conference is not included in "all other proceedings" under §977(b), the defendant's appearance was not "lawfully required" under §1305, and the order forfeiting bail was in error.

Rules of statutory construction place the highest emphasis on the statutes' own words, which are accorded their reasonable and commonsense

his or her right to be personally present, as provided by paragraph (2). If the accused agrees, the initial court appearance, arraignment, and plea may be by video, as provided by subdivision (c).

"(2) The accused may execute a written waiver of his or her right to be personally present, approved by his or her counsel, and the waiver shall be filed with the court. However, the court may specifically direct the defendant to be personally present at any particular proceeding or portion thereof. The waiver shall be substantially in the following form: [Waiver of Defendant's Personal Presence]"

construction in line with the purposes of the statutes. The objective is to harmonize the statutes so that absurd results do not follow. Here, the plain language of §977(b)(1) requires a defendant charged with a felony to appear at certain specified hearings (*e.g.*, arraignment). Beyond the specified hearings, a defendant is required to appear in court "at all other proceedings" unless he has executed a waiver of the right to be present. The purpose of §977(b) is to protect the defendant's due process rights in the criminal proceeding. (*People v. Jimenez* (1995) 38 Cal.App.4th 795, 800, fn 8.) Under §1305(a) a defendant is required to appear at certain specified hearings (*e.g.*, trial, *and* at any other hearing when his presence "is lawfully required"). The purpose of bail and of §1305(a) is to ensure the defendant's attendance in court and obedience to the court orders. (*People v. Ranger Insurance Company* (2006) 139 Cal.App.4th 1562, 1564.)

These two statutes are not mutually exclusive. In other words, to give effect to one statute does not preclude giving effect to the second. Absent a waiver of personal appearance executed under §977(b), a defendant is required to appear "at all other proceedings." And under §1305(a)(4), such a proceeding falls within "any other occasion" when the defendant's presence is "lawfully required." As such, a court has the authority to forfeit bail when a defendant charged with a felony who has not executed a waiver, such as the one in this case, fails to appear at a

pretrial conference. This interpretation gives effect to both statutes without sacrificing the purpose of either.

III. STANDARD OF REVIEW

Ordinarily, "an order denying a motion to vacate a bail forfeiture is normally reviewed for abuse of discretion. On the other hand, to the extent that the evidence before the reviewing court is undisputed and the dispositive issue is one of statutory construction, we apply an independent review standard." (*People v. International Fidelity Ins. Co.* (2012) 212 Cal.App.4th 1556, 1561 (internal citations omitted).)

In this case, the issue presented is one of law requiring a determination of whether two statutes can be harmonized, giving effect to both without leading to absurd or anomalous results. The issue presented requires this Supreme Court to determine as a matter of law whether the phrase, "shall be present at all other proceedings" under §977 (b)(1) means a defendant's appearance is "lawfully required" under §1305(a)(4). Thus, independent review is appropriate.

IV. COMBINED STATEMENT OF THE CASE AND FACTS

The facts of this case are undisputed. On November 2, 2010, Elshaddai Machabeus Bent ("Bent") was charged with two felony offenses. (Clerk's Transcript "CT" 13.) The following day, Safety National Casualty Corporation ("Safety National" or "the surety"), posted bond for Bent's release. (CT 11.) Bent appeared as required on several dates. (CT 13-15.)

On April 5, 2011, he appeared for a pre-trial. (CT 21.) There was a discussion about settling the case, and everyone agreed to put the case over. (CT 21.) The court inquired if Bent would waive his right to a speedy trial, and Bent agreed. (CT 21.) The court ordered that bail would stand, and there was a discussion about the next court date. (CT 21-22.) The court suggested the 29th of April, and counsel agreed. The court said "Okay. The 29th of April. Friday, April 29, at 8:30 a.m." (CT 22.)

Bent did not appear on April 29, 2011. (CT 17.) His attorney did not know where he was or why he was not present. (CT 23.) The court forfeited bail and issued a bench warrant. (CT 17.) The following week, the clerk timely sent notice of the forfeiture to the bail agent and to the surety. (CT 27.)

Months later, the court granted a motion to extend the appearance period for 180 days.³ (CT 18.) On January 13, 2012, during this extended period, Safety National filed a motion to vacate forfeiture and exonerate bail. (CT 4.) The motion argued that the trial court "was without

³ The docket refers to this motion as a "motion to toll time for investigator to apprehend and return to jurisdiction." (CT 17.) The docket also states that the motion was pursuant to Penal Code §1304.5, and was granted for 180 days. (CT 18.) It thus appears this was a standard motion to extend the appearance period (not a motion to toll time). The appellate court maintained this error and refers to the trial court "tolling" time to have the forfeiture vacated.

jurisdiction to forfeit bail” when Bent failed to appear for pre-trial on April 29, 2011. (CT 3.)⁴

The trial court heard the motion to exonerate bail on February 7, 2012. (Reporter’s Transcript “RT” 1.) The issue was whether Bent had been lawfully required to appear on the date the forfeiture was declared. The trial court found that Bent's appearance had been required on April 29, 21011. It denied the surety's motion for several reasons; however, none was that Bent's appearance had been required by §977(b). (RT 2-4.) Notice of the motion's denial was not given.

On May 9, 2012, Safety National appealed the denial of its motion to vacate forfeiture and exonerate bond. On April 9, 2014, the Second District Court of Appeal, Division Eight, reversed the trial court in a published opinion. The People filed a Petition for Rehearing. On May 9, 2014, the Court of Appeal denied the Petition for Rehearing and ordered modifications to its opinion.⁵ The Court found that Bent had not been required to appear at his pre-trial conference on April 29, 2011. It held that “[n]o rule of law makes an appearance at such a conference mandatory and, absent a previous trial court order to appear at such a hearing, a defendant's failure to do so is not grounds for declaring bail forfeited.” It also found

⁴ The clerk's transcript contains only one page of the argument portion of the motion.

⁵ The modifications were unrelated to the discussion of §977.

that §977 "has no bearing on a defendant's obligation to appear at certain trial court proceedings in order to maintain his status on bail."

The People filed a Petition for Review, and on July 23, 2014, this Court granted review.

V. ESTABLISHED RULES OF STATUTORY CONSTRUCTION SHOW THAT SECTION 1305, SUBDIVISION (A) AND SECTION 977, SUBDIVISION (B) ARE NOT MUTUALLY EXCLUSIVE AND DO NOT CONFLICT WITH EACH OTHER

The guiding principles for bail forfeitures are settled. The forfeiture or exoneration of bail is a statutory procedure which is governed by special statutes. (*People v. International Fidelity Ins. Co.* (2012) 212 Cal.App.4th 1556, 1561; *People v. Ranger Ins. Co.* (1998) (hereinafter, *Ranger 1998*) 66 Cal.App.4th 1549, 1552.) "The law traditionally disfavors forfeitures and this disfavor extends to the forfeiture of bail." (*People v. Indiana Lumbermens Mutual Ins. Co.* (2010) 49 Cal.4th 301, 307 (citing *People v. United Bonding Ins. Co.* (1971) 5 Cal.3d 898, 906).) Section 1305, therefore, must be strictly construed in favor of the surety to avoid the harsh results of a forfeiture. (*County of Los Angeles v. Ranger Ins. Co.* (1999) 70 Cal.App.4th 10, 16.) However, "[t]he policy disfavoring forfeiture cannot overcome the plainly intended meaning of the statute." (*People v. Indiana Lumbermens Mutual Ins. Co.*, *supra*, 49 Cal.4th at p. 308.)

The fundamental purpose of statutory construction is to ascertain the intent of the lawmakers so as to effectuate the purpose of the law. (*In re Marriage of Harris* (2004) 34 Cal.4th 210, 221.)

In construing these terms, we must consider the object to be achieved and the evil to be prevented by the legislation. Words used will be given the meaning that reason and justice require, rather than a literal meaning which would lead to an unjust and absurd consequence. Courts do not blindly follow the literal meaning of every word if to do so would frustrate the legislative purpose. The provisions of section 1305 in particular must be accorded a reasonable, commonsense construction in line with their apparent purpose, in order to advance wise legislative policy and avoid absurdity.

(*People v. Fairmont Specialty Group* (2009) 173 Cal.App.4th 146, 152-153 (internal citations, quotations, and punctuation omitted).)

"We begin by examining the statutory language, giving the words their usual and ordinary meaning. If there is no ambiguity, then we presume the lawmakers meant what they said, and the plain meaning of the language governs." (*Day v. City of Fontana* (2001) 25 Cal.4th 268, 272 (internal citations omitted).) Further, an "interpretation which gives effect is preferred to one that makes void." (Civ. Code §3541.) And "[t]o the extent that uncertainty remains in interpreting statutory language, consideration should be given to the consequences that will flow from a particular interpretation. Accordingly, [the court should] not parse each literal phrase of a statute if doing so contravenes the obvious underlying

intent, or leads to absurd or anomalous results." (*People v. Adames* (1997) 54 Cal.App.4th 198, 212 (internal citations omitted).)

Here, the issue is whether the mandatory appearance requirements of §977(b) are applicable to the bail forfeiture provisions under of §1305(a). Under §1305(a), "[a] court shall in open court declare forfeited the undertaking of bail ... 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." (§1305(a), emphasis added.) Thus, if the defendant's presence is lawfully required on any occasion other than arraignment, trial, judgment, or sentencing, the court has the authority to forfeit bail for the defendant's unexcused absence at the hearing.

Under §977(b)(1), in all cases in which a felony is charged, the accused shall be present at 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 sentencing. Further, "[t]he 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." (§977(b)(1), emphasis added.) The plain wording of this statute compels a defendant, charged with a felony, to

be present at arraignment, time of plea, during the preliminary hearing, during trial where evidence is presented, and sentencing. And unless the defendant has signed a written waiver of the right to be present "at all other proceedings," the defendant must appear "at all other proceedings."

The People contend that §1305(a) and §977(b) are not mutually exclusive statutes. Section 977 is a general law designed to protect a felony defendant's due process right to be present at all his trial proceedings. (*Ranger 1998, supra*, 66 Cal.App.4th at 1553-1554.) Further, §1305 is a special or specific statute designed to govern the procedure for bail forfeitures. (*Ibid.*) If a conflict arises between a general law and a special law, the special law controls. (*Ibid.*)

In *Ranger 1998*, the defendant executed a written waiver to appear under §977(b). On the date set for trial, the trial court held a master trial calendar hearing, but the defendant did not appear and no reason for his nonappearance was given. The trial court took no action on the bail bond and placed the trial on standby. Two days later, the case came up for hearing on a defense motion to continue the trial. Again, the defendant did not appear, and the trial court then ordered the bail forfeited. (*Id.* at 1551-1552.) The People appealed the order setting aside the forfeiture and exonerating the bond, and the Court of Appeal affirmed. It found the trial court lost jurisdiction over the bond when it failed to order it forfeited on the date of trial (*i.e.*, the master trial calendar hearing). The appellate court

defined "trial" to include proceedings from the time when the parties are called to try their cases in court. Under §977, the defendant was expressly required to appear at trial when evidence was taken, but not otherwise since he had a waiver in place. Because the defendant was not compelled to appear at the trial under §977, but otherwise compelled to appear at trial under §1305, the Court of Appeal found a conflict between the two statutes. As a special statute, the provisions of §1305 controlled over those of §977. The trial court, therefore, lost jurisdiction over the bail bond when it failed to order it forfeited at the master trial calendar hearing. (*Id.*, at 1552-1553.)

The People do not find an inherent conflict between the two statutes, nor do the People believe that *Ranger 1998* is controlling here. First, Bent did not execute a §977 waiver. Second, the hearing on April 29, 2011, at which Bent's bail was forfeited was not: an arraignment; the time for taking a plea; a preliminary hearing; a trial date (much less a trial date on which evidence was to be taken); a judgment or sentencing hearing; or a time to surrender himself in execution of the judgment.⁶ If anything, the April 19, 2011 pretrial conference fell in to the category of "other" – all "other" proceedings or any "other" occasion. (§§977(b)(1) and 1305(a)(4).)

For bail forfeiture purposes, the question is whether the defendant was "lawfully required" to appear at this "other" occasion. Under §977(b),

⁶ These are the hearings specified in either §977 or §1305, some of which overlap.

Bent was required to be personally present at this "other" proceeding because he had *not* executed a written §977 waiver. Unlike the conflicting definitions of "trial" in *Ranger 1998*, there is no conflict in how this "pretrial conference" is defined as between §977(b) and §1305(a)(4) – it is an "other" proceeding. The fact that Bent failed to appear for the pretrial conference – an "other" category of appearance – reflects that he violated both §977(b) and §1305. Unlike in *Ranger 1998* where the appellate court found a violation of one statute but not of the other, and thus found a conflict, Bent's failure to appear for the pretrial conference was in violation of both statutes.

Even if there is a temptation to perceive a conflict between §1305 and §977, the fact that Bent had not executed a waiver and the fact that the trial judge forfeited bail on the first date at which the court had authority to do so (*i.e.*, Bent's first unexcused non-appearance), makes *Ranger 1998* inapposite. Although the stated purpose of §977(b) is to protect the due process rights of the defendant, this does not mean §977 does not also serve the purpose of ensuring a defendant's appearance at the hearings specified in subdivision (b) (absent a waiver). Indeed, a defendant's failure to appear at an "other" proceeding without a waiver may result in the issuance of a bench warrant under §978.5.⁷ Thus, the failure to appear at a pretrial

⁷ In pertinent part, §978.5 states: "A bench warrant of arrest may be issued whenever a defendant fails to appear in court as required by law

conference, like the one on April 29, 2011, does not compel the voiding §1305 over §977, or vice-versa. (Civ. Cod, §3541.)

The express language and plain meaning of §1305(a)(4) and §977(b) do not create a conflict between the sections, nor are they mutually exclusive. Both statutes can be given effect even if a §977 waiver is in place. Since §1305(a)(4) compels the defendant's appearance when "lawfully required" on "any other occasion," with a §977 waiver the defendant is not lawfully required to appear at an "other proceeding" and, therefore, there is no conflict. Certainly §977(b) is applicable to forfeiture proceedings under §1305.

VI. OTHER THAN THIS PARTICULAR CASE, PRIOR CASE LAW SUPPORTS THE PEOPLE'S CONSTRUCTION OF SECTION 977 AND ITS APPLICATION TO SECTION 1305

In finding that other appellate courts had "considered and rejected" the proposition that §977 requires a defendant's appearance for purposes of §1305, Division Eight cited four cases.

The first case is *People v. National Automobile and Casualty Insurance Company* (2004) (hereinafter *National Automobile 2004*) 121 Cal.App.4th 1441, which references §977, but does not "consider and reject" its application to bail forfeiture. There, a defendant was ordered to return

including, *but not limited to*, the following situations" (§978.5, emphasis added.) Here again is a Penal Code section that lists specific events where a court may order a bench warrant, but it is not an exhaustive list. The "but not limited to" language of §978.5 is analogous to the "other" language of §§1305 and 977.

for a hearing on demurrer, but before the hearing date, the matter was continued. The trial judge was concerned about losing jurisdiction over the bond, so the court kept the date on calendar – knowing that the defendant would not appear – and purportedly ordered and stayed an order of forfeiture. The defendant appeared on the continued date, at which time the court purportedly reinstated the bond. The defendant appeared at many subsequent hearings, but failed to appear for sentencing, at which time his bond was properly forfeited.

The surety argued that the trial court was without jurisdiction to declare forfeiture at sentencing because of the failure to give notice of the earlier purported forfeiture and reinstatement. The appellate court disagreed with the surety. The *National Automobile 2004* Court found it was unnecessary to give notice of the purported (*i.e.*, invalid) forfeiture on a date when the defendant's appearance was not required and that there was sufficient excuse for the non-appearance. (*Id.* at 1451.)

National Automobile 2004 references §977 because the trial judge had a mistaken belief that §977 required the defendant's appearance – even when the hearing had been continued and the court specifically stated it did not expect the defendant to appear. The case relies on *People v. Classified Insurance Corp* (1985) 164 Cal.App.3d. 341 in stating: "The absence of a section 977 waiver does not convert all proceedings—specifically including a hearing on a section 995 motion to strike—into occasions at which a

defendant's presence in court is lawfully required for purposes of section 1305." (*National Automobile 2004, supra*, 121 Cal.App.4th at 1449.) The *National Automobile 2004* Court did not conduct an independent analysis of whether §977 can make a defendant "lawfully required" to appear under §1305. It certainly did not "consider and reject" the possibility – it agreed with the reasoning of *Classified*, nothing more.

The second case is *People v. Classified Insurance Corporation* (1985) (hereinafter *Classified*) 164 Cal.App.3d 341, which stated that "[a]bsent an order or other actual notification from the court that [a defendant's] appearance was required at a given date and time, the failure . . . to appear cannot be grounds for forfeiture of bail." (*Id.* at 346, emphasis added.) In *Classified*, the defendant was present in court when a trial confirmation hearing and a trial date were set. In the interim, defense counsel brought a motion under §995 to set aside the information; the defendant was not present at the motion hearing and counsel advised the court he had lost contact with the defendant. The trial court (erroneously) forfeited bail, and the surety moved to set aside the forfeiture. The trial court (erroneously) denied the motion.

The *Classified* Court disagreed with the People, who argued that §977 required the defendant's appearance because he was charged with a felony and had not executed a waiver, and thus the forfeiture was proper. The *Classified* Court explained that the People's proposed "construction of

section 1305 by reference to section 977 is untenable . . . [because i]t is absurd to contend that an attorney by appearing without his client . . . *before the latter was directed to appear* could place his client in default." (*Id.* at 345 (emphasis in original, internal citations omitted).) It found that "[s]uch a construction would clearly be inconsistent with the purpose of section 977." (*Id.* at 346.) The *Classified* Court expressed concern that forfeiting bail when a defendant does not have notice of a hearing could render §1305 unconstitutional. It concluded that there must be a court order "*or other actual notification from the court*" before a court can properly forfeit bail upon a defendant's unexcused non-appearance. (*Ibid.*, emphasis added.)

The holding of *Classified* does not compel a finding that §977 can never apply to §1305. On its facts, *Classified's* holding is proper. The defendant in *Classified* had *no notice* of the hearing at the which the trial court forfeited bail. By comparison, Bent was *present in court and advised of the next court date*. (CT 21-22.) *Classified* does not support the appellate court's contention that §977's application to bail forfeiture had been "considered and rejected."

The third case is *People v. National Automobile and Casualty Insurance Company* (1977) (hereinafter *National Automobile 1977*) 77 Cal.App.3d Supp. 7, which does not include any reference to §977. In that case, the date on the face of the bond was two days earlier than the

arraignment date set by the court. The defendant did not appear on either, and the court forfeited bail on the arraignment date. The surety argued that the court lost jurisdiction over the bond by not declaring a forfeiture two days earlier – the date shown on the bond. The appellate division disagreed with the surety. It held that bail may be forfeited "[o]nly when a defendant fails to appear on a date ordered by the court (*or otherwise required by law.*)" (*Id.* at 9, emphasis added.)

National Automobile 1977 did not address whether §977 qualifies as "otherwise required by law." It is not an example of an appellate court "considering and rejecting" application of §977 to §1305. Rather, The People believes it supports a finding that §977 requires a felony defendant's appearance because it falls within "otherwise provided by law."

The fourth case is *People v. Ranger Insurance Company* (1992) (hereinafter *Ranger 1992*) 6 Cal.App.4th 1301, which likewise does not include any reference to §977. There, the defendant was present when his case was set for trial, as well as for a Narcotics Case Review ("NCR") several days earlier. There is no record of whether the defendant appeared at the NCR, but the defendant did not appear for trial and the court forfeited bail. The surety argued that the court lost jurisdiction over the bond by not declaring a forfeiture at the earlier NCR. The appellate court disagreed with the surety. It relied on a declaration by the trial court judge which

explained that a defendant's presence is not required at an NCR hearing. It addressed the informal nature of NCRs and explained:

The purpose of bail is to ensure the defendant's appearance at hearings which are set. If a hearing is not set, a defendant cannot fail to appear for purposes of bond forfeiture.

(*Id.* at 1306 (internal citation omitted).)

Ranger 1992 is not an example of an appellate court "considering and rejecting" application of §977 to §1305. Rather, it supports The People's position below that it is proper for an appellate court to give deference to a trial judge's opinion of the case before him.

These four were the only cases on which the appellate court relied in holding that §977 "has no bearing on a defendant's obligation to appear at certain trial court proceedings in order to maintain his status on bail."

People v. Jimenez (1995) (hereinafter *Jimenez*) 38 Cal.App.4th 795, which the appellate court did not address, provides a thoughtful consideration of the issue. *Jimenez* explained that although §977 was "adopted to protect the defendant's due process rights, it nonetheless mandates his or her presence." (*Id.* at 800, fn 8.) The *Jimenez* Court explained that "[t]here is no danger [section 977] would be used unfairly against a defendant who was ignorant of the court date because section 1305 only allows bail forfeiture if the defendant fails to appear without sufficient excuse." (*Ibid.*) This explanation clarifies *Classified*, where the

trial court should have found sufficient excuse for the defendant's failure to appear at the §995 hearing because he had never received notice of the hearing. In *Jimenez*, the defendant failed to appear for execution of judgment following appeal; thus his appearance was required under §1305(a)(5), and the *Jimenez* Court did not need to determine whether his presence would also have been required under §977(b). (*Ibid.*) Although the *Jimenez* Court did not decide the issue, it said it agreed with the People's position that §977 required the defendant's appearance. (*Ibid.*)

In addition to discussing *Classified*, *Jimenez* also discusses *People v. Sacramento Bail Bonds* (1989)) (hereinafter *Sacramento*) 210 Cal.App.3d 118, which held that a specific court order is not required to compel a defendant's appearance. Rather "the defendant's presence could be required by provision of law." (*Jimenez, supra*, 38 Cal.App.4th at 800, citing *Sacramento, supra*, 210 Cal.App.3d at 121-22.) The only other provision of law addressed by the appellate court in Bent's case was Rule of Court 4.112 (which the appellate court found required a defendant's appearance at a readiness conference). But there is no reason to believe that this one rule of court is the only other provision that makes a defendant's presence "lawfully required" under §1305. Indeed, the fact that a rule of court can compel a defendant's appearance supports the position that §977 can compel a defendant's appearance.

Finally, the appellate court failed to address *People v. Indiana Lumbermens Mutual Insurance Company* (2011)) (hereinafter *Indiana*) 194 Cal.App.4th 45. The *Indiana* Court's analysis takes for granted that §977 applies to bail forfeiture. In *Indiana*, the defendant had executed a waiver of appearance. Section 977 requires a felony defendant's appearance at the preliminary hearing, but the preliminary hearing was continued several times (*i.e.*, it was never called for that hearing), when the defendant was not present.

On the date on which the preliminary hearing actually was called and took place [the defendant] was present. Because neither section 977 nor section 1305 requires a defendant's presence for a hearing on a motion for a continuance, the section 977 waiver precluded a finding that [the defendant]'s absence was unexcused.

(*Id.* at 49-50.)

The *Indiana* Court found that because a §977 waiver was in place, the trial court properly did *not* forfeit bail when the defendant did not appear for the continuances. It follows that, had there been no waiver, the *Indiana* Court would have found the defendant was required to appear at all other proceedings (including continuances), and the trial court would have had to forfeit bail at the continuance of the preliminary hearing (or lose jurisdiction over the bond).

By considering additional case law, which the appellate court did not acknowledge, there is no question that §977(b) must be taken into account when determining if a felony defendant's presence is lawfully required under §1305.

VII. CONCLUSION

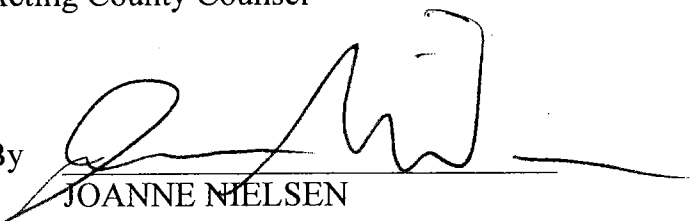
Established rules of statutory construction dictate that the appearance requirements of §977(b) must be considered in conjunction with the appearance requirements of §1305. The case law that truly considers this issue compels the same result. When a felony defendant has not executed a waiver of appearance, his presence is lawfully required under §1305(a)(4). The People respectfully requests that the opinion of the Court of Appeal be reversed.

DATED: August 22, 2014

Respectfully submitted,

RICHARD D. WEISS
Acting County Counsel

By



JOANNE NIELSEN
Principal Deputy County Counsel

BRIAN T. CHU
Principal Deputy County Counsel

Attorneys for People of the State of
California by the County of Los Angeles

CERTIFICATE OF WORD COUNT PURSUANT TO RULE 8.204(c)

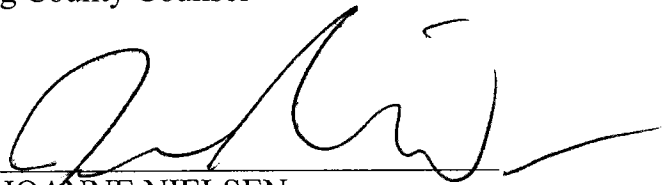
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DATED: August 22, 2014

Respectfully submitted,

RICHARD D. WEISS
Acting County Counsel

By



JOANNE NIELSEN
Principal Deputy County Counsel

BRIAN T. CHU
Principal Deputy County Counsel

Attorneys for People of the State of
California by the County of Los Angeles

PROOF OF SERVICE

Case Nos.: **B243773/LA066432/SJ3732/S218712**

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STATE OF CALIFORNIA, County of Los Angeles:

Anna Pacheco states: I am employed in the County of Los Angeles, State of California, over the age of eighteen years and not a party to the within action. My business address is 648 Kenneth Hahn Hall of Administration, 500 West Temple Street, Los Angeles, California 90012-2713.

That on August 22, 2014, I served the attached:

OPENING BRIEF ON THE MERITS

upon Interested Party(ies) by placing the original a true copy thereof enclosed in a sealed envelope addressed as follows as stated on the attached mailing list:

John M. Rorabaugh, Esq.
Attorneys at Law
801 Parkcenter Drive, Suite 205
Santa Ana, California 92705

Office of the Clerk
SUPREME COURT OF CALIFORNIA
350 McAllister Street
San Francisco, California 94102
(1 Original + 13 copies)

Clerk for the Hon. Martin L. Herscovitz
SUPERIOR COURT OF CALIFORNIA
6230 Sylmar Avenue, Dept. NWR
Van Nuys, California 91401

Electronically Submitted to the
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Second Appellate District, Division Eight,
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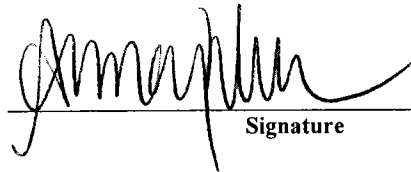
By overnight delivery. I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons on the service list. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on August 22, 2014, at Los Angeles, California.

Anna Pacheco

Type or Print Name of Declarant
and, for personal service by a Messenger Service,
include the name of the Messenger Service



Signature