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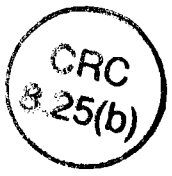

IN THE SUPREME COURT

OF THE STATE OF CALIFORNIA

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 Appellate District,
Division Eight
Case No. B243773 (LASC No. LA066432)

PEOPLE'S REPLY BRIEF

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

Attorneys for 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

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

Court of Appeal
State of California
Second Appellate District

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Court of Appeal Case Number: S218712

Case Name: County of Los Angeles v. Safety National Casualty Insurance Company (Elshaddai Bent)

Please check the applicable box:

[X] There are no interested entities or parties to list in this Certificate per California Rules of Court, Rule 8.208(d)(3).

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Printed Name: Brian T. Chu

Address: 648 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

State Bar No: 161900

Party Represented: County of Los Angeles, Plaintiff-Respondent

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INTRODUCTION

Safety National does not address the People's position that Penal Code §977, subdivision (b)[1] is clear on its face. The People assume, therefore, that Safety National concedes there is no question as to the plain meaning of the statute. Accordingly, the only issue is whether Safety National's position is supported by the common law. The People believe that all the cases relied upon by Safety National are easily distinguishable from the present case. Thus, Safety National's argument that §977, subdivision (b) does not apply to §1305, subdivision (a) has no merit.

ARGUMENT

I. The Plain Language of §977 Determines Its Meaning

Safety National fails to explain why the plain language of §977(b) should be ignored in favor of a different interpretation – an interpretation which would not give effect to the words chosen by the Legislature. Rather than accepting that the statute means what it says, Safety National makes a circular argument: "[S]ection 977, subdivision (b)(1) did not lawfully require the defendant to appear, because that section does not require a defendant's presence, or a written waiver at a pretrial hearing." (Answer Brief on the Merits "ABM" pages 3-4.) Safety National does not provide authority for this position. Safety National does not explain why a pretrial

[1] All statutory references are to the Penal Code unless otherwise specified.

hearing is so insignificant. More importantly, Safety National does not explain why the plain language of §977(b) should be ignored, but instead makes a circular, conclusory statement and then moves on.

Safety National attempts to thwart the plain language of §977. But §977(b) is clear. A criminal defendant charged with a felony must be personally present at all hearings unless he has executed a waiver. In this case, the defendant was charged with a felony and he had not executed a waiver. Thus, the bond was properly forfeited when he failed to appear at a pretrial hearing.

Safety National also suggests an absurd interpretation of §977(b) by arguing that a felony defendant – without having executed a waiver – should be allowed to pick and choose which hearings he will attend and which "non-critical" hearings he will let his attorney handle for him. (ABM 25.) It even suggests that such an interpretation would provide clarity to courts and parties. Instead, this proposed interpretation would create confusion and render meaningless the plain language of §977(b)(1) and of §1305(a)(4).

Safety National takes the position that §1305(a)(4) is a lesser subdivision than subdivisions (a)(1), (a)(2), (a)(3), and (a)(5). While acknowledging that the other subdivisions mean what they say, but according to Safety National speaks out of the other side of its mouth and argues that subdivision (a)(4)'s "any other occasion" means only: 1) when

required by a rule of court, or 2) when ordered to return by the court. Certainly, if those were the only "other occasions" covered by subdivision (a)(4), the legislature could easily have given §1305(a) six subdivisions – one for each specific circumstance – instead of five, one of which is a catch-all provision.

Finally, Safety National's arguments regarding "mandatory" hearings and "critical" hearings is wholly without support. The Penal Code does not make these distinctions. It is true that case law has described hearings as non-mandatory (*e.g.*, a §995 motion, such as in *People v. Classified Insurance Corp.* (1985) 164 Cal.App.3d 341 and in *People v. North Beach Bonding Co.* (1974) 36 Cal.App.3d 663), but the Penal Code does not discriminate between hearings. Section 977(b) requires a felony defendant to be present at "all" other proceedings.

2. Safety National Misapplies Existing Case Law Applying §977.

Safety National argues the decision below was correct and lists the cases on which the Court of Appeal relied. But it then ignores those four cases and instead discusses *People v. North Beach Bonding Company* (1974) 36 Cal.App.3d. 663. (ABM 7.) Safety National correctly cites *North Beach's* holding (§977 does not require a defendant to appear at a motion hearing of which he has no notice), but seems to ignore that it was

Safety National arguing that §977 should have applied to §1305. There, Safety National argued the trial court lost jurisdiction over the bond by not declaring a forfeiture at an earlier hearing – the motion hearing of which the defendant did not have notice – because the defendant had not executed a waiver. It was this argument that caused the *North Beach* Court to say: "It is absurd to contend that an attorney by appearing without his client an hour and one-half before the latter was directed to appear could place his client in default." (*North Beach, supra*, 36 Cal.App.3d at 669.)

Safety National fails to recognize that *North Beach*, as well *People v. Classified Insurance Corp., supra,* (1985) 164 Cal.App.3d 341 do not stand for an absolute principle that §977 cannot apply to §1305 and bail forfeitures. Rather, *North Beach* and *Classified* hold that bail cannot be forfeited at a hearing when the defendant has had no notice and could not have been expected to be present in court. In *Classified* it was the People who made the absurd argument. Fortunately, both those appellate courts looked at the facts and the law, used common sense, and came to consistent conclusions. In both cases, when questioning why the defendant was not present, the trial court should have found sufficient excuse for the non-appearance based on lack of notice. In the present case, bail was forfeited at the next regularly scheduled court date – a date for which the defendant had actual notice.

Interestingly, Safety National cites *People v. International Fidelity* (2012) 212 Cal.App.4th 1556 which holds that §977(a) *does* apply to §1305. (ABM, 11-12) There, the trial court improperly forfeited bail because counsel was permitted to appear for a misdemeanor defendant pursuant to §977(a), even though counsel advised the court he did not know of the defendant's whereabouts. Safety National does not explain why §977, subdivision (*a*) applies to §1305 for purposes of bail forfeiture, but §977, subdivision (*b*) should not apply. Instead, Safety National argues that *International Fidelity* "did not address the circumstances presented here" and alludes to the conclusion that *International Fidelity's* application of §977 is irrelevant. (ABM 11.) Its conclusion is wrong.

Safety National addresses several cases discussing whether a defendant was entitled to be present under §977. (ABM 19-24.) Safety National is correct when it argues that these cases found that a defendant did not have a due process right to be present at a hearing, but that is not the issue now before this Supreme Court. In those cases, the defendant was appealing his conviction, arguing that it must be overturned because his due process rights were violated. In those cases, the reviewing courts found that the defendant did not need to be present to defend the charges against him. Most of those cases involved appeals by defendants who were convicted of murder and had been in custody during all the proceedings in the trial court. The procedural posture and the questions presented In those

cases are completely different from what is posed here to this Supreme Court.

The fact that §977 does not guarantee a defendant's right to be present at all proceedings does not mean that §977 does not require a defendant's presence for purposes of §1305(a)(4). There is no case interpreting §977 that supports Safety National's position here.

3. Safety National Erroneously Relies on Cases Addressing Void Forfeitures Under §1035

Safety National relies upon, but misinterprets, *People v. Jimenez* (1995) 38 Cal.App.4th 795, which actually supports the People's position. In *Jimenez*, a defendant's felony conviction was affirmed on appeal. After the remittitur issued, the district attorney had the case calendared in the trial court for "further proceedings" and sent a letter to the defendant's attorney asking him to secure the defendant's presence at the hearing. The defendant failed to appear even though he told his attorney he would be in court. The defendant was then charged in an information with a felony violation under §1320.5.[2] The defendant demurred to the information, contending he was

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[2] Section 1320.5 states, in pertinent part: "Every person who is charged with or convicted of the commission of a felony, who is released from custody on bail, and *who in order to evade the process of the court* willfully fails to appear as required, is guilty of a felony." (Emphasis added.)

not required to appear at the hearing absent a court order requiring his appearance. The trial court sustained the demurrer and dismissed the information. The district attorney appealed the ruling. (*People v. Jimenez, supra*, 38 Cal.App.4th at 797-798.)

The Court of Appeal reversed the trial court's dismissal of the information. It recognized that "the plain language of [section 1320.5] does not specify a court order is necessary to make the defendant's presence 'required'" (*Id.* at 798.) It explained that the language in §1320[3] was similar. (*Id.* at 799.) In order to be guilty of a felony, the defendant must have evaded the *process of the court*, and not necessarily have violated a *court order*. In contrast, §1318 specifically *requires a court order* before a defendant could be released on his own recognizance via a promise to appear. (*Ibid.*) Thus, "[t]he Legislature obviously was aware of the distinction and could have used the same language in sections 1320 and 1320.5 had it chosen to do so." (*Ibid.*)

Likewise, there is no reason to think that the Legislature was not cognizant of the distinction between §977(b)(1) and §1305(a)(4). The express language of §977(b)(1) requires the defendant to appear at all other

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[3] Section 1320 states, in pertinent part: "Every person who is charged with or convicted of the commission of a felony, who is released from custody on his or her own recognizance and *who in order to evade the process of the court* willfully fails to appear as required, is guilty of a felony" (Emphasis added.)

proceedings unless a written waiver is in place. Section 1305(a)(4) requires the court to forfeit bail if the defendant fails to appear when his presence is lawfully required. If the Legislature intended to limit the application of §977(b)(1) it could have worded the statute so that its provisions did not apply to bail forfeiture proceedings. Rather, the statute reflects that §977(b)(1) should be interpreted so that it gives each word some operative effect. (*Imperial Merchant Services, Inc. v. Hunt* (2009) 47 Cal. 4th 381, 390.) The interpretation that gives effect to §977(b)(1) is that in felony cases, a defendant is required to be present in court for specified proceedings, and to appear at all other proceedings unless a written waiver is executed. There is no justification nor authority compelling a reading that would exempt hearings where jurisdiction over a bail bond is at issue. To do so, as Safety National suggests, would alter the plain meaning of the statute.

Safety National argues that an expansive reading of §977 "could be used to justify forfeitures where the defendant was not ordered to appear, the defendant's presence was not mandated by any specific or statute and even where the defendant did not have actual notice of such hearing." (ABM 24-25.) Safety National's concern is unwarranted. The *Jimenez* Court was inclined to agree that the defendant's appearance after the remittitur issued was required under §977. It stated:

> Although the section may have been adopted to protect the defendant's due process rights, it nonetheless mandates his or her presence. *There is no danger the section 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,'* and section 1320.5 only allows for culpability if the defendant fails to appear with specific intent to evade the court's process. [Citation.] But because we find Jimenez's presence was required under section 1305, we need not decide whether section 977 mandated his presence as well.

(*Jimenez*, *supra*, 38 Cal.App.4th at 800, fn 8 (emphasis added).)

The *Jimenez* Court had minimal, if any, concern that §1305 would be abused to the detriment of bail sureties because of §977. It recognized that §977 was adopted to secure a defendant's due process rights; nevertheless, that did not mean the section was inapplicable to whether a court could forfeit bail if a defendant failed to appear when §977(b) required his appearance. Thus, *Jimenez* supports the People's contention that the provisions of §§977 and 1305 are not mutually exclusive.

Safety National additionally relies on a list of cases in support of its overbroad contention that forfeitures have been held void where defendants were not present at a hearing identified under section 1305, subdivision (a). (ABM 12-17.) These cases are easily distinguishable from the present case.

Preliminarily, Safety National relies on several cases with operative facts that pre-date 1968. In 1968, §977 was amended to require defendants

charged with a felony to be present "at all other proceedings" unless a written waiver had been executed. (See Stats. 1968, ch. 1064, § 1; *People v. Anderson* (1970) 6 Cal.App.3d 364, 370.) Thus, the following cases are distinguishable and are inapplicable here because the provisions of §977(b) being litigated in the present case were not extant: *People v. Ebner* (1863) 23 Cal. 159; *People v. Budd* (1881) 57 Cal. 349; *Carroll v. Police Court of San Francisco* (1924) 66 Cal.App. 66; *People v. Aymar* (1929) 98 Cal.App. 1; *People v. Semecal* (1968) 264 Cal.App.2d Supp. 985; *People v. Resolute Ins. Co.* (1968) 259 Cal.App.2d 633 (overruled on other grounds); and *People v. ex rel. Burnett v. Morstadt* (1894) 101 Cal. 379. Moreover, except for the two latter cases, these cited cases involve misdemeanor charges, *not felonies as in the present case*. Similarly distinguishable is *Beasley v. Municipal Court* (1973) 32 Cal.App. 3d 1020, because the charge was a misdemeanor and not a felony.

Safety National gives *People v. American Contractors Indemnity Co.* (2001) 91 Cal.App.4th 799 short-shrift. There, the Court of Appeal held the forfeiture order was void because bail was forfeited at a motion to revoke bail that was scheduled a month before the defendant was ordered to appear for sentencing. (ABM at 14.) But the Court of Appeal *did not* hold the bail forfeiture void based on the relevance of the hearing. Rather, the *American Contractor's* Court only held that the summary judgment was void because the trial court clerk did not mail the bail forfeiture notice

within the required 30 days after the trial court ordered bail forfeited. (*American Contractors Indemnity Co., supra*, 91 Cal.App.4th at 804-807.) Further, summary judgment was not entered within 90 days after the trial court had jurisdiction to enter it. (*Id.* at 810-811). *American Contractors* had nothing to do with whether the defendant's appearance at the hearing was lawfully required either by § 977 or §1305 but rather the trial court's non-compliance with the notice and filing requirements of §1305.

Interestingly, Safety National relies on *People v. Allen* (1994) 28 Cal.App.4th 575. There, the defendant appealed his conviction and posted an appeal bond for his release. While his appeal was pending, he was charged with an additional offense under a different case number. The defendant failed to appear at a sentencing hearing for the latter case, but the trial court ordered bail forfeited on both cases, even while the first case was still pending appeal. (*Id.* at 578.) The surety's motion to set aside summary judgment was denied, but the Court of Appeal reversed; it held that the defendant did not violate the terms of the appeal bond, which only provided for forfeiture where the defendant fails to surrender himself following an appeal, not while the appeal was pending. (*Id.* at 580-582.) The procedural posture and underlying facts are completely different from the present case. *Allen's* holding is not persuasive.

What makes reliance on *People v. Allen* interesting is that the Court of Appeal further stated that:

> [The surety] is incorrect, however, that the court must make a specific order for the defendant's return after issuance of the remittitur. The affirmance of a judgment is self-executing. . . . Forfeiture of the appeal bond is appropriate where the defendant fails to surrender himself following an appeal even though the defendant did not receive an order by the court stating the time or place of surrender.

(*Id.* at 582 (internal citations omitted.) This dictum is in harmony with *People v. Jimenez*, *supra*, 38 Cal.App.4th at 801, holding that a court order is not necessary to compel a defendant's appearance in court for execution of judgment, for which his presence is lawfully required.

Safety National's reliance on *People v. Accredited Surety & Casualty Co.* (2012) 209 Cal.App. 617 is also misplaced. There, bail was forfeited when the defendant failed to appear at a hearing specified by the jailor on the bail bond. In order to avoid paying an impending summary judgment, the bail agent posted a second bail bond with the court clerk before the 185-day period expired on the first bond. As a result, the court clerk set aside the bail forfeiture, recalled the bench warrant, and reinstated the bail with the second bond without the defendant ever having appeared in court. The trial court later set aside the exoneration of the first bond as void, and denied the surety's motion to set aside the forfeiture on the second bond as being a void order. (*Id.*, at 620-621.) The Court of Appeal affirmed the order on the first bond, but reversed the order on the second bond, holding that the defendant had to be in custody before the second bond could be

posted; because the defendant was not in custody, the bail bond was void. (*Id.*, at 622.) *Accredited's* holding was based on whether the bond was void *ab initio* and had nothing to do with whether the nature of the court appearance fell within the parameters of §§977 or 1305.

In *People v. Ranger Ins. Co.* (2006) 145 Cal.App.4th 23, a bail bond was posted for the defendant's release with an arraignment date specified by the jailor. Because a complaint had not been filed within the statutory period of 15 days of the arraignment date, a police department clerk sent the defendant a notice that the arraignment date was to be continued. (*Id.* at 25-26.) Relying upon §1305, subdivision (a), the Court of Appeal held that the police department's notice was not a court order and that the police department did not have authority to continue an arraignment hearing. (*Id.* at 30.) *Ranger (2006)'s* holding is not relevant to the nature of the hearing at which the defendant's presence is "lawfully required," but only relevant as to whether notice requirements were met, which is not an issue in this case.

Finally, Safety National's reliance on *People v. American Surety Ins. Co.* (2009) 178 Cal.App.4th 1437 is similarly misplaced. There, the holding is the same as in *Ranger (2006)*; the only difference is that the letter advising the defendant to appear came from the prosecuting agency instead of from law enforcement – neither of which constituted an order to appear.

None of these cases bear any resemblance to the fact pattern posed in this case. The People contend that the holdings in these cases are irrelevant to the issue presented.

CONCLUSION

The People respectfully ask this Court to reverse the opinion of the Court of Appeal.

DATED: October 15, 2014

Respectfully submitted,

MARK J. SALADINO
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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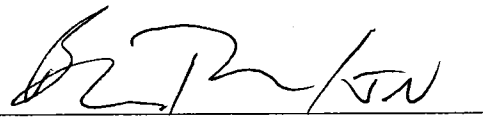
DATED: October 15, 2014

Respectfully submitted,

MARK J. SALADINO
County Counsel

By 
JOANNE NIELSEN
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**

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 October 15, 2014, I served the attached:

PEOPLE'S REPLY BRIEF

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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
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