

Oral Arguments Preview: *People v. Safety National Casualty Insurance Co.*

Today, the Supreme Court of California will hear oral arguments in *People v. Safety National Casualty Insurance Co.* That case involves the interplay between California Penal Code (the “Code”) sections 977 and 1305, and whether a defendant’s failure to appear at a scheduled court proceeding can be the basis for an order of bail forfeiture. Ultimately, the court’s decision will likely hinge on exactly what constitutes a required hearing, while balancing statutory requirements against criminal defendant’s due process and fair trial rights.

Section 977 requires a felony defendant to appear at certain court proceedings unless he or she signs a waiver permitting an appearance through counsel. It reads, in relevant part, as follows: “[I]n all cases in which a felony is charged, 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” Penal Code § 977(b)(1).

Section 1305, in turn, requires a court to forfeit a defendant’s bail under certain situations if the defendant fails to appear in court. It states, in relevant part: “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 . . . (4) Any other occasion prior to the pronouncement of judgment if the defendant’s presence in court is lawfully required.” Penal Code § 1305(a).

Petitioner Safety National Casualty Corporation (“Surety”), the surety, through an agent, posted bond for a defendant who then failed to appear at a scheduled pre-trial conference without waiver, and the trial court forfeited bail. The trial court then extended the appearance for 180 days. During the extension, Surety filed a motion to vacate the bail forfeiture, arguing the trial court did not have jurisdiction to do so. The court denied the motion, and Surety appealed. On appeal, the Second

District reversed trial court, finding that section 977 serves only to protect a defendant's due process rights and does not apply to bail status. It held that the Penal Code does not require a felony defendant's presence at an ordinary pretrial conference. SCOCA granted review to resolve a conflict within the appellate courts.

Surety argues that section 977 only requires a defendant's personal presence at certain fundamental hearings, specifically those targeted at protecting defendants' constitutional due process and fair trial rights. Thus, Surety maintains that section 1305 only requires a trial court to forfeit bail upon a defendant's failure to appear at certain specified hearings, which does not include the pretrial hearing at issue in this case. Finally, Surety claims that policy considerations of protecting rights compel the conclusion that the statutory provision should be interpreted to avoid forfeitures.

In response, the People rely on rules of statutory construction to argue that section 1305's "any other occasion" language "encompasses the mandate of [section] 977 that a felony defendant—in the absence of waiver—must be personally present at all hearings." See *Respondent's Petition for Review* at 9. This position suggests that the lower court characterized the hearing as an "ordinary pretrial conference," which would fall under the category of "all other proceedings" when the words of the statutes are given their ordinary meaning. The People offer several cases for instruction, the most prominent of which states,

Section 977 allows a felony defendant to waive his or her personal presence at some hearings, appearing instead solely through his or her attorney. However, even if a section 977 waiver is filed, the defendant must be personally present during the preliminary hearing. [Citation and footnote omitted] Because the defendant's presence is lawfully required, an unexcused failure to appear during the preliminary hearing requires the trial court to declare the bail bond forfeited. (§ 1305, subd. (a)(4).)

People v. Ind. Lumbermens Mutual Ins. Co. (2011) 194 Cal.App.4th 45, 49.

At its base, this case pits policy against the canons of statutory interpretation as a window to legislative intent. Upholding the appellate court's decision may ultimately undercut the ability of trial courts to compel a felony defendant's

appearance at all proceedings, which could create arguments on appeal about due process violation claims. Laws are written and generally understood to reflect the legislature's intended purpose in their plain meaning, and holding that a scheduled pretrial hearing for which the defendant had proper notice does not constitute a "lawfully required" appearance requires ambiguity in the statute that this writer does not see.

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- Eric Young, Staff Editor for the *Hastings Law Journal*