STATE OF LOUISIANA	*	**NO. 2015-KA-1232**
VERSUS	*	
		COURT OF APPEAL
LADAREUS J. JONES	*	
		FOURTH CIRCUIT
	*	
		STATE OF LOUISIANA

* * * * * * *

APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 515-607, SECTION "I"
Honorable Karen K. Herman, Judge
* * * * * *
Judge Terri F. Love
* * * * * *

(Court composed of Judge Terri F. Love, Judge Daniel L. Dysart, Judge Joy Cossich Lobrano)

LOBRANO, J., CONCURS IN THE RESULT
DYSART, J., DISSENTS

Leon A. Cannizzaro, Jr.
District Attorney
Edward McAuliffe
Assistant District Attorney
Parish of Orleans
619 South White Street
New Orleans, LA 70119

COUNSEL FOR APPELLEE/STATE OF LOUISIANA

Michelle H. Hesni
EHLE & HESNI, INC.
1108 4th Street
Gretna, LA 70053

COUNSEL FOR APPELLANT/ FINANCIAL CASUALTY & SURETY INC.

REVERSED
JULY 13, 2016

Financial Casualty & Surety Company ("FCS") appeals the trial court's judgment denying its motion to set aside a judgment of bond forfeiture. When Ladareus Jones ("Mr. Jones") failed to appear at his arraignment the trial court issued an *alias capias* without bond for his arrest. The Orleans Parish Sheriff's Office ("OPSO"), originally charged with his detention, subsequently arrested Mr. Jones and released him the same day. We find that because OPSO failed to perform its mandated duties the State failed to strictly comply with statutory provisions to obtain a judgment of bond forfeiture. Additionally, OPSO's error was not reasonably foreseeable as OPSO is required by law to execute a trial court's orders and thus, the failure to do so constitutes a "fortuitous event" pursuant to La. C.Cr.P. art. 345(I) and La. R.S. 15:83(C)(2). For these reasons, the trial court erred in denying FCS' motion to set aside the judgment of bond forfeiture. Therefore, we reverse the trial court and order the judgment of bond forfeiture set aside.

PROCEDURAL HISTORY AND FACTUAL BACKGROUND

In April 2013, the State filed a bill of information against Mr. Jones, charging him with two counts of possession of controlled dangerous substances (cocaine and marijuana). The magistrate judge set the bond at $22,500. FCS posted two surety bonds on Mr. Jones' behalf that day, one in the amount of $15,000 and the other in the amount of $7,500. The court set the arraignment for April 26, 2013.

Mr. Jones failed to appear for the scheduled arraignment on April 26, 2013, at which time the State sought forfeiture of the bonds. The trial court granted the State's motion and executed a judgment of bond forfeiture in favor of the State and against Mr. Jones and FCS in the amount of $22,500.[1] The same day, the trial court issued an *alias capias* with no bond for Mr. Jones. The matter was continued without date and notice of the bond forfeiture was mailed to FCS and Mr. Jones. Subsequently, OPSO arrested Mr. Jones on July 9, 2013, and he was released the same day.

Thereafter, FCS timely filed a motion to set aside bond forfeiture and petition for nullity of judgment. Following a hearing on the motion, the trial court took the matter under advisement and later denied FCS' motions. Counsel for FCS objected to the ruling, indicating an intent to seek a writ of supervisory review. The docket master reflects that over the next few months FCS filed various motions for

[1] The judgment also ordered Mr. Jones and FCS to pay legal interest, reasonable attorney's fees in the amount of 25% of the bond, and various other charges and costs.

extensions of time. An appeal was lodged with this Court in November 2014; however, because the record did not contain a signed judgment on FCS' motions, the appeal was dismissed as premature and was remanded to the trial court. *See State v. Jones*, 14-1259 (La. App. 4 Cir. 5/27/15), 171 So.3d 1020.

The record does not indicate what occurred regarding the bonds after the matter was remanded, but only pertains to Mr. Jones, himself.[2] However, the record now contains a June 2015 written judgment, by which the trial court denied FCS' motion. FCS filed a suspensive appeal which the trial court granted.[3] This timely appeal follows.

STANDARD OF REVIEW

Interpretation and application of the applicable bond forfeiture statutes presents a question of law. When reviewing questions of law, appellate courts apply a *de novo* standard of review. "[T]he appellate court 'gives no special weight to the findings of the district court, but exercises its constitutional duty to review questions of law and renders judgment on the record.' [internal citation omitted] 'Thus, in such cases, appellate review of questions of law is simply whether the trial court was legally correct or legally incorrect." *Cannizzaro v. Am. Bankers Ins. Co.*, 12-1455, 12-1456, p. 3 (La. App. 4 Cir. 7/10/13), 120 So.3d 853, 856 (quoting *Winston v. Millaud*, 05-0338, p. 5 (La. App. 4 Cir. 4/12/06), 930 So.2d 144, 150).

---

[2] At an arraignment in March 2015, Mr. Jones pled guilty to both counts and was sentenced on the first count to thirty months at hard labor at the Department of Corrections, and on the second count to six months at Orleans Parish Prison. After a multiple bill was filed by the State, the sentences were vacated and Mr. Jones was sentenced in April 2015, as a multiple offender to 30 months at hard labor with the Department of Corrections, with credit for time served.

[3] The Order of Appeal references transcripts from a hearing on October 21, 2014, and a December 9, 2014 hearing on a motion for new trial. Neither of these transcripts are part of the record and there is no indication in the record that hearings were held on either of these days.

In *State v. Nellon*, this Court explained:

> "A statute must be applied and interpreted in a manner that is logical and consistent with the presumed purpose and intent of the legislature." *Moss v. State*, 2005–1963, p. 15 (La. 4/4/06), 925 So.2d 1185, 1196. The words of the law must be given their generally prevailing meaning. La. C.C. art. 11. Where the language is susceptible to different meanings, it must be interpreted as having the meaning that best conforms to the purpose of the law. La. C.C. art. 10. Legislative intent is to be determined "by considering the law in its entirety and all other laws on the same subject matter and by placing a construction on the law that is consistent with the express terms of the law and with the obvious intent of the legislature in enacting the law." *Moss*, p. 15, 925 So.2d at 1196.

Id., 12-1429, p. 4-5 (La. App. 4 Cir. 9/4/13), 124 So. 3d 1115, 1118

DISCUSSION

In *State v. Kerrison*, 97-1759, p. 1 (La. 10/17/97), 701 So.2d 1347, 1348, the Louisiana Supreme Court held "that La. C.Cr.P. art. 345 and La. R.S. 15:85 are not two separate and independent provisions regarding the rights of the surety with respect to bond forfeitures. Instead, they must be considered together in the context of each other." *Id*. (citing *State v. Wheeler*, 508 So.2d 1384 (La. 1987)).

La. R.S. 15:85 recognizes bond forfeitures; however, they are not favored in Louisiana. *Id.* (citing *State v. Breaux*, 94-1562, 94-1553 (La. App. 3 Cir. 5/13/95), 657 So.2d 371); *Nellon,*12-1429, p. 5, 124 So.3d at 1118. Therefore, "the State must strictly comply with statutory provisions to obtain a judgment of bond forfeiture." *Id*.

The issue at bar is whether, under La. C.Cr.P. art. 345, a defendant's arrest and release in the same jurisdiction of his original arrest, following the issuance of an *alias capias* without bond, are grounds for setting aside a judgment of bond

forfeiture. This Court could find no cases which address this specific issue. However, FCS avers that OPSO was responsible for retaining the custody of Mr. Jones after his July 9, 2013 arrest because the trial court had issued an *alias capias* without bond on April 26, 2013. FCS maintains that because of OPSO's failure to do so and because Mr. Jones was incarcerated by "the officer originally charged with his detention," it "must be relieved of all obligations under the bond."

The trial court found OPSO responsible for Mr. Jones' improper release when the trial court ordered an *alias capias* with no bond. However, the trial court relied on *State v. Frith*, 14 La. 191 (1839) in denying FCS' motion to set aside the judgment of bond forfeiture.[4] The State argues, as it did at the motion hearing, that in order for a surety to be absolved of its obligation to forfeit a bond under La. C.Cr.P. art. 345(B), the surety must obtain a letter of verification from the officer originally charged with the defendant's detention that confirms that the defendant is and remains currently within the officer's custody.

The purpose of a bail bond is to "ensure that the accused will appear at all stages of the proceedings against him." *Nellon*, 12-1429, p. 5, 124 So.3d at 1118; *State v. Allen*, 11-0693, p. 4 (La. App. 4 Cir. 8/8/12), 98 So.3d 926, 929; *See also State v. Matteson*, 36,628, p. 7 (La. App. 2 Cir. 12/11/02), 833 So.2d 1199, 1203 ("The basic concept of the bail obligation is to make certain that a defendant appears in court with the surety paying a financial penalty when he fails to do so").

[4] The *Frith* decision stood for the proposition that formal surrender of a defendant was required in order for a surety to be relieved of its obligation under a bond. We note, however, that *Frith* was decided one hundred seventy-seven (177) years ago and prior to Louisiana's adoption of La. C.Cr.P. art. 345, which establishes the current methods of surrender of a defendant, including but not limited to formal surrender.

When a defendant fails to appear in court at a subsequent scheduled appearance, the State may, upon showing the necessary proof, obtain a forfeiture of the surety bond. La. C.Cr.P. art. 349.2.

Additionally, La. C.Cr.P. art. 345 sets forth the governing authority for the surrender of a defendant. La. C.Cr.P. art. 345(A) states in pertinent part, that "the surety may surrender the defendant or the defendant may surrender himself, in open court or to the officer charged with his detention, at any time prior to forfeiture or within the time allowed by law for setting aside a judgment of forfeiture of the bail bond." Subsection (A) establishes the procedure for a formal surrender and states that "[u]pon surrender of the defendant, the officer *shall* detain the defendant in his custody…and *shall* acknowledge the surrender by a certificate…Thereafter the surety shall be fully and finally discharged." *Id.* (emphasis added). There is no question in this case that Mr. Jones was not formally surrendered under La. C.Cr.P. art. 345(A) by FCS or by Mr. Jones, himself. The issue before us involves Mr. Jones' brief incarceration and whether that incarceration absolves FCS of liability under the bond.

A surety may seek to have a judgment of bond forfeiture set aside by use of summary proceedings based on La. C.Cr.P. arts. 345 and 345.9 "within one hundred eighty days after the date of mailing the notice of the signing of the judgment of bond forfeiture." La. C.Cr.P. art. 349.5(A). Thereafter,

> [w]hen the defendant has been surrendered in conformity with this Article or a letter of verification of incarceration has been issued to the surety as provided for in this Article, the court shall upon presentation of the certificate of surrender or the letter of verification

> of incarceration, order that the surety be exonerated from liability on his bail undertaking and shall order any judgment of forfeiture set aside.

La. C.Cr.P. art. 345(F).

La. C.Cr.P. art. 345(B)

FCS sought to set aside the judgment of bond forfeiture based on the provisions of La. C.Cr.P. art. 345. Thus, FCS had one hundred eighty days from April 26, 2013, within which to file its motion. FCS timely filed its motion on October 23, 2013. In support of its motion, FCS attached an August 14, 2013 letter of verification from OPSO, stating that Mr. Jones "was incarcerated from July 9, 2013 through July 9, 2013." FCS avers that because Mr. Jones was incarcerated by the officer originally charged with his detention within the time allowed by law for setting aside a judgment for forfeiture, it is entitled to be fully discharged from its obligations under the bond within the meaning of La. C.Cr.P. art. 345(B).

The State contends that this Court need not look any further than the express language of Paragraph B, which states "[i]f the defendant *is* incarcerated by the officer originally charged with his detention," the surety "may apply for and receive from any officer in charge of any facility in the state of Louisiana or foreign jurisdiction charged with the detention of the defendant a letter verifying that the defendant *is* incarcerated." La. C.Cr.P. art. 345 (emphasis added). The State asserts that the use of present tense demonstrates the requirement of the defendant's continued incarceration for purposes of surrendering a defendant. Consequently, the State claims that the statute requires that the defendant "be currently incarcerated" and the letter of verification state that the defendant is "currently being held by the officer originally charged with his detention."

We find that while the State's interpretation focuses on the use of present tense in La. C.Cr.P. art. 345(B), it overlooks the fact that the legislature included a temporal element as it relates to the defendant's incarceration. Namely, La. C.Cr.P. art. 345(B) provides:

> If the defendant is incarcerated by the officer originally charged with his detention *at any time* prior to forfeiture or within the time allowed by law for setting aside a judgment for forfeiture of the bail bond, the surety may apply for and receive from any officer in charge of any facility in the state of Louisiana or a foreign jurisdiction charged with the detention of the defendant a letter verifying that the defendant is incarcerated, but only after the surety verifies to the satisfaction of the officer charged with the detention of the defendant as to the identity of the defendant. After compliance with the provisions of Paragraph F of this Article, the surety shall be fully and finally discharged and relieved, as provided for in Paragraphs C and D of this Article, of all obligations under the bond.

Id. (emphasis added).

Within six months of the mailing of the notification of the judgment of bond forfeiture, Mr. Jones was incarcerated on July 9, 2013, by OPSO, who was originally charged with Mr. Jones' detention. *See* La. R.S. 15:85. He was erroneously released the same day. The statute requires only that the defendant be incarcerated "at any time" either prior to forfeiture or within the time allowed by law for setting aside the forfeiture.[5] Nothing in the statute expressly requires the defendant be presently incarcerated at the time the surety obtains a letter verifying his incarceration. The legislature could have easily included express language to the same. However, for reasons discussed in greater detail below, we find La. C.Cr.P. art. 345 does not contemplate a situation wherein the sheriff fails to perform its mandated duties.

As a practical matter, FCS contends that the State's interpretation would

"require the surety to sit at the jail, checking names of those arrested against the names of those who have failed to appear, and obtain a letter verifying incarceration at that instant moment in time." Moreover, the surety would have to supervise OPSO's operations to ensure that it did not release a defendant arrested on an *alias capias* without bond. We find such actions by the surety are not required in order for the surety to be relieved of its obligations on a bond.

Despite the sheriff's error in releasing Mr. Jones in violation of the trial court's order, the State argues that the proverbial buck stopped with FCS. The State claims that, after learning of Mr. Jones' release, FCS was required to physically present Mr. Jones to the sheriff for surrender. As a result, FCS' failure to surrender Mr. Jones after he was released within the time allowed for setting aside the forfeiture obligates FCS under the bond.

The purpose of criminal bail bonds is to "ensure that the accused will appear at all stages of the proceedings against him." *Nellon*, 12-1429, p.5, 124 So.3d at 1118. In the instance that a defendant fails to appear, "[i]t is axiomatic, that as the time period between entry of the forfeiture and the sending of notice thereof increases, the surety's chances of tracking down the defendant are progressively diminished." *State v. William*, 07-648, p. 9, (La. App. 5 Cir. 1/22/08), 977 So.2d 154, 159. Therefore, La. R.S. 15:85 serves to "shield the surety from prejudice brought by the delay in learning of a defendant's failure to appear." *Id.*, 07-648, p. 6, 977 So. 2d 154, 157-58.

Similarly, a review of article 345 in its entirety demonstrates that notice is a necessary component of a defendant's surrender that safeguards the surety and its

---

[5] Paragraph B's corollary, La. C.Cr.P. art. 345(D), uses past and present tense when referring to the defendant's incarceration, appearing to support FCS's interpretation.

bond obligation. Just as a surety's chances of tracking down the defendant are significantly diminished when the period between entry of forfeiture and the surety's notification increases, the same is true under the present circumstances. When the officer originally charged with the defendant's detention arrests the defendant pursuant to an *alias capias* without bond and fails to hold him, "the surety's chances of tracking down the defendant are progressively diminished." *Id.*, 07-648, p. 9, 977 So.2d at 159. Therefore, we find timely notice of the defendant's re-arrest under La.C.Cr.P. art. 345(B) underscores the purpose of criminal bail bonds and the safeguards of La. R.S.15:85.

Additionally, "[e]ach sheriff or deputy shall attend every court that is held in his parish, and shall execute all writs, orders, and process of the court or judge thereof directed to him." La. R.S. 13:5539(B) (emphasis added). At the hearing, the trial court acknowledged as much, stating, "…I don't understand how he gets arrested on my capias and he is in OPP for 24 hours and he is not held. That is something that I have to take up with the jail…." Thus, by law the sheriff lacks the discretion to ignore its mandated duties.

In *Kerrison*, the surety challenged the judgment of bond forfeiture based on the sheriff's failure to perform its mandated duties. The surety attempted to surrender the defendant to the officer charged with his detention pursuant to La. C.Cr.P. art. 345, and the officer refused to accept the surrender. *Id.*, 97-1759, p. 1, 701 So.2d at 1348. The Louisiana Supreme Court reversed the trial court's denial of the surety's motion to set aside the bond forfeiture, finding the unambiguous language of La. C.Cr.P. art. 345(A) makes "clear that an officer charged with the detention of a defendant has no discretion to refuse to accept a surety's lawful surrender of [the] defendant." The Court held that La. C.Cr.P. art. 345 and La.

R.S. 15:85 "must be considered together in the context of each other." *Id.* As a result, the Court found that the sheriff, a state actor, had no discretion to refuse the surety's lawful surrender of the defendant pursuant to La. C.Cr.P. art. 345. *Id.* Therefore, in circumstances where the State refuses the surety's lawful surrender of a defendant, "the State may not claim satisfaction of its requirements under La. R.S. 15:85 to effectuate bond forfeiture." *Id.*

On appellate review, we must consider "the law in its entirety and all other laws on the same subject matter" and interpret the law in a manner "consistent with the express terms of the law" and legislative intent. *Nellon*, 12-1429, p. 5, 124 So.3d at 1118 (internal citation omitted). The purpose of criminal bail bonds is not to enrich the State but to compel a defendant's appearance in court to answer the charges filed against him. When a defendant fails to appear and an *alias capias* without bond is issued, article 345 provides not only a means for ensuring the defendant's appearance in court, but also a way for the surety to be discharged from its bond obligation. To set aside a bond forfeiture based on article 345, the surety, itself, must comply with *all* laws applicable to criminal bail bonds. Nevertheless, the surety must also rely on the trial court, the State, and the sheriff to do the same. The State suggests that despite any error on the part of itself, or its actors, the surety remains liable on the bond if the released defendant fails to appear or the surety fails to surrender him. *Kerrison* indicates otherwise as it found a surety will not be held accountable for a sheriff's failure to comply with its mandated duties under the applicable bail bond statutes. For this reason, jurisprudence requires strict compliance and not just of the surety.

Considering La. C.Cr.P. art. 345 in its entirety in light of La. R.S. 13:5539, we find article 345 does not contemplate an officer's failure to follow the mandates

of a court or judge. For that reason, it was error for OPSO to release Mr. Jones when the court issued an *alias capias* without bond. We find, like *Kerrison*, that in circumstances where the sheriff fails to hold the defendant in his custody without bond by court order, "the State may not claim satisfaction of its requirements under La. R.S. 15:85 to effectuate bond forfeiture" when the released defendant subsequently fails to appear or the surety fails to formally surrender him. *Id.*

La. C.Cr.P. art. 345(I)

Moreover, La. R.S. 15:83(C)(1) provides that a surety is not liable for his failure to perform when it is "caused by a fortuitous event that makes performance impossible." A fortuitous event is one that, at the time the contract was made, the surety could not have been reasonably foreseen. La. R.S. 15:83(C)(2).[6] As discussed above, it is presumed that the sheriff will execute the orders of a court as it is required by law. Thus, because we find La. C.Cr.P. art. 345 does not contemplate an officer's failure to perform its mandated duties, we do not find it is a risk which is reasonably foreseeable. Moreover, as a matter of principle, if it was foreseeable that the sheriff would not perform his mandated duties to detain a defendant following the issuance of an *alias capias* without bond, then sureties would have little, if any, incentive to enter contracts that obligate themselves on a bond. Consequently, FCS asserts that it should not be liable, nor should the State be rewarded, for the failure of a state actor to perform its mandated duties.

The record does not indicate the reason for OPSO's failure to perform its mandated duties, resulting in the release of Mr. Jones while there was an outstanding warrant for his arrest without bond. In light of this court's reading of

[6] Black's Law Dictionary defines a "fortuitous event" as "[a] happening that, because it occurs *only by chance or accident*, the parties could not reasonably have foreseen." (emphasis added).

La. C.Cr.P. art. 345 together with La. R.S. 13:5539 and 15:85, we find OPSO's failure to perform its mandated duties is not reasonably foreseeable. Accordingly, we find OPSO's failure constitutes a "fortuitous event" under La. C.Cr.P. art. 345(I) and La. R.S. 15:83(C)(2).

DECREE

Considering La. C.Cr.P. art. 345 in its entirety with all other laws pertaining to criminal bail bonds, La. C.Cr.P. art. 345 does not contemplate OPSO's failure to perform its statutorily mandated duties. Consequently, the sheriff erred when it released Mr. Jones. In light of *Kerrison*, the State did not satisfy the requirements of La. R.S. 15:85 because OPSO had no discretion to release Mr. Jones while there was an outstanding *alias capias* for his arrest without bond. For the same reason, it is not reasonably foreseeable that OPSO would fail to execute the orders of a court. Finding the improper release in this case is not reasonably foreseeable, the error of OPSO constitutes a fortuitous event pursuant to La. C.Cr.P. art. 345(I) and La. R.S. 15:83(C)(2). Accordingly, we reverse the trial court's ruling and set aside the judgment of bond forfeiture.

REVERSED