

Circuit Court for Baltimore County
Case No. 03-K-14-006223

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1637

September Term, 2017

BIG BOYZ BAIL BOND, INC. ON BEHALF
OF LEXINGTON NATIONAL INSURANCE
CORPORATION

v.

STATE OF MARYLAND, ET AL.

Berger,
Leahy,
Reed,

JJ.

Opinion by Reed, J.

Filed: March 16, 2021

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

On October 30, 2014, Big Boyz Bail Bond, Inc. (hereinafter “Appellant”) posted a \$150,000 bail bond for James Ferguson (hereinafter “Defendant”), who was facing five counts of first-degree assault and five counts of second-degree assault. On February 9, 2015, the State of Maryland (hereinafter “the State”) amended its indictment against Defendant and added a number of additional charges, including one count of first-degree murder. The Appellant was never notified of the amended indictment. The Defendant was never re-arrested on the newly added charges, and his bail status was not changed. He was also never given new conditions of release specific to the additional charges.

The court scheduling information record seems to indicate that he had a trial date of April 8, 2015 which was cancelled. On June 9, 2015 he had another hearing scheduled, that was described as a “waiver or speedy trial hearing.” On June 25, 2015, Defendant was scheduled for a Show Cause Hearing on June 29th, which he subsequently failed to attend. The Circuit Court for Baltimore County ordered that the \$150,000 bail bond posted by Appellant be forfeited absent Defendant’s capture. The court after that set a criminal motions hearing date on July 7, 2015 and then a trial date on September 14th through the 17th of 2015. After Appellant failed to capture Defendant, Appellant satisfied the bond forfeiture. Subsequently, Appellant filed a petition to strike and remit the bail bond posted. The Circuit Court for Baltimore County did not have a hearing and denied Appellant’s

petition.¹ It is from this denial that Appellant files this timely appeal. In doing so, Appellant brings one question for our review, which we have rephrased for clarity:²

- I. Did the circuit court err in denying Appellant’s Petition to Strike Bond Forfeiture and for Remission of Bond on the grounds of material increase in risk when, after Appellant posted the bond, the State added additional charges?

The essential problem in this case is a legal question and it cannot be solved by having a hearing to gather more facts but by deciding the legal issue under Maryland law. For the reasons stated, we reverse the denial of the Petition to Strike and remand for the striking of the forfeiture and return of the \$150,000 bail.

FACTUAL AND PROCEDURAL BACKGROUND

On October 24, 2014, Defendant was arrested and charged with five counts of first-degree assault and five counts of second-degree assault. According to the Statement of Probable Cause, Defendant allegedly pointed a gun at a “group of people with whom he had been in a verbal dispute” at a bowling alley parking lot. The police caught Defendant as he was fleeing from the scene. When the police arrived on scene, Defendant was in a

¹ It should be noted that neither party requested a remand for a new hearing. Appellant requested that the decision of the court be reversed, the forfeiture stricken, and that the court be ordered to discharge the underlying bond and remit \$150,000 to the surety, Lexington National Insurance, Corporation.

² Appellant presents the following question:

1. Whether the Circuit Court erred in denying a petition to strike and remit a bail bond on the grounds of material increase in risk where, after the surety posted the bond, the State added additional, more charges, including a charge of first-degree murder which carries a mandatory sentence of life imprisonment?

parking lot across the street. While on the scene, the officers rendered aid to one of Defendant's victims, Brandon Britton, who had passed out in a vehicle while the police were investigating the crime scene. The officers noted that Mr. Britton showed no signs of life. All of this information was contained in the statement of charges prepared by the police. The statement of charges also included a reference to a video of the incident. Additionally, the statement of charges said that homicide detectives were notified. Thereafter, homicide detectives interviewed Defendant. A summary of Defendant's statement to detectives was included in the statement of probable cause. Defendant stated that he began to run when a helicopter shined a light on him in the parking lot. Although there were no allegations that the gun was discharged, or that Defendant physically attacked anyone, an individual at the scene was found unconscious and later pronounced dead after efforts by the officer to revive him. This individual had not been shot. No gun was recovered from the scene. Defendant was across the street when the individual died at the scene. Again, all of this information was in the statement of probable cause.

After Defendant was arrested, a Baltimore County District Court Commissioner set Defendant's bond at \$500,000. On October 27, 2014, during a bail review, Defendant's bond was reduced to \$150,000. Subsequently, Appellant's services were retained by Defendant's girlfriend, Teresa Komotho. Appellant agreed to post Defendant's bond and guarantee Defendant's appearance in court. In deciding to post Defendant's \$150,000 bail bond, Appellant reviewed Defendant's "ties to the community, history of appearing in court when required, and the severity of, and potential penalties associated with, the charges that the State had lodged against him."

On October 30, 2014, Defendant was released on Appellant’s \$150,000 bond. The bond order included an order that “Defendant personally appear, as required, in any court in which the charges are pending, or in which a **charging document may be filed based on the same acts or transactions...**” (Emphasis added). The bail bond also stated that the bond shall continue in full force and effect until discharged pursuant to Rule 4-217. The only condition of release was that the Defendant have no contact with any of the listed victims. On November 17, 2014, Defendant was indicted, and his case was forwarded to the Circuit Court for Baltimore County. On February 9, 2015, the State added a number of additional charges against Defendant stemming from the alleged verbal dispute at the bowling alley, including one count of first-degree murder.³

On June 29, 2015, Defendant failed to appear for a Show Cause Hearing at the Circuit Court for Baltimore County. Consequently, the Honorable Robert E. Cahill, Jr. ordered that the \$150,000 bail bond posted by Appellant be forfeited. The circuit court then afforded Appellant 90 days – until September 29, 2015 – to capture defendant or forfeit the \$150,000 bail bound. Subsequently, Appellant filed a “Petition for Extension of Time to Produce Defendant” and on September 9, 2015, the Honorable Michael Finifter granted Appellant’s petition, giving Appellant an additional 90 days – until December 28, 2015 – to capture Defendant. However, Appellant was unable to locate and capture Defendant

³ The State charged defendant with one count of first-degree murder, one count of wearing, carrying or transporting a handgun upon the person, and four counts of using a firearm in the commission of a felony or violent crime.

prior to December 28, 2015, and on December 14, 2015, Appellant satisfied the bail bond by remitting a check to the Circuit Court for Baltimore County.⁴

A little more than a year and a half later, on May 25, 2017, Appellant filed a Petition to Strike Bond Forfeiture and for Remission of Bond (“Petition to Strike”)⁵ on the grounds that the State’s additional charges on February 9, 2015, constituted a material increase in the risk placed on Appellant. On June 22, 2017, the circuit court denied Appellant’s petition. The order stated “[u]pon consideration of the Petition to Strike Bond forfeiture and the State’s answer to the Petition is hereby DENIED.” It is from this order that Appellant files this timely appeal.

STANDARD OF REVIEW

Whether a defendant’s failure to appear was reasonable, under Maryland Rule 4-217, is ordinarily reviewed for abuse of discretion. *See Wiegand*, 393 Md. at 195 (2001) (citing *Alleghany Mut. Cas. Co. v. State*, 234 Md. 278, 282-83 (1964)). Although we ordinarily review an order denying a motion to strike forfeiture of a bond agreement for abuse of discretion, where the issue is one of statutory construction or contract interpretation, and the evidence is not in dispute, the de novo standard of review applies. *See Muhammad v. Prince George's County Board of Education*, 246 Md. App. 349 (2020) (“[O]ur review of a trial court’s interpretation of a contract...is a question of law and is subject to a de novo standard of review.”); *Damon v. Robles*, 245 Md. App. 233 (2020)

⁴ During the course of locating and capturing defendant, Detective D. Swinney of the Baltimore County Police learned that defendant fled to Africa.

⁵ This document was not included in the record extract.

(Statutory interpretation is a legal issue that is reviewed de novo.); *See also e.g. People v. American Bankers Ins. Co.*, Cal. App. 4th 348, 350 (Cal. App. 1992).

DISCUSSION

A. Parties' Contentions

Appellant argues that the Petition to Strike should have been granted because the State's decision to amend Defendant's indictment by adding the first-degree murder charge qualifies as a reasonable ground for Defendant's failure to appear and to strike the bail bond forfeiture. Specifically, Appellant relies on Maryland Rule 4-217(i)(3), which states that if a "defendant or surety can show reasonable grounds for the defendant's failure to appear" the court "shall (A) strike out the forfeiture in whole or in part; and (B) set aside any judgment entered thereon pursuant to subsection 5(A) of this section, and (C) order the remission in whole or in part of the penalty sum paid pursuant to subsection (4) of this section." Appellant further argues that "the additional charges, including [the] first-degree murder [charge], lodged after Appellant took the calculated risks to post [Defendant's] bond resulted in a material increase in the risk on the bond which Appellant did not agree to accept."

Appellant asserts that "(1) courts across the country have held that a material change in risk to the surety after the bond has been posted constitutes cause to discharge the bond"; (2) Maryland has recognized this principle of law; and (3) the additional first-degree murder charge against Defendant amounted to a material increase "in the risk to the surety that warrants discharge of the bond." Finally, Appellant argues that the terms of the bail bond agreement does not mean Appellant agreed to ensure the appearance of Defendant to

answer for charges which materially increased Appellant’s risk under the bond. Instead, Appellant states that while a surety agrees to ensure a Defendant’s appearance for trial to face subsequently added charges, it “certainly does not mean that the surety is agreeing to do so for charges which materially increase its risk under the bond.” Appellant claims that if it had known that the defendant was charged with murder sooner, it would have had an opportunity to locate him before he fled.

The State responds that the circuit court did not abuse its discretion “or act arbitrarily or unreasonably when it refused to strike [Appellant’s] bond forfeiture.” Specifically, the State asserts that the State did not materially alter Appellant’s risk of having its bond forfeited. The State contends that it did not unilaterally modify Appellant’s obligations because Defendant’s additional murder charge did not result in “a substituted contract, or impose new risks that are fundamentally different from risks [Appellant] originally accepted.” The State contends that Appellant’s understanding of Maryland Rule 4-217 is incorrect. Specifically, the State argues that Appellant “conflates two distinct legal principles: common law rules of suretyship, which focus on whether a bondsman’s obligations were materially altered, and Rule 4-217, which focuses on a defendant’s justification for failing to appear.” Moreover, the State argues that Appellant heavily relies on Florida case law and does not cite to any Maryland case law that holds that the State amending a defendant’s indictment constitutes a material risk and subsequently strikes the bond forfeiture.

Finally, the State contends that Appellant is not “entitled to recover its bond under Maryland Rule 4-217.” Specifically, the State asserts that, pursuant to Maryland Rule 4-

217, Appellant is only entitled to recover a forfeited bond when there are “reasonable grounds for Defendant’s failure to appear.” In this instant case, the State contends that there were no “reasonable grounds for the defendant’s failure to appear” because Defendant “fled the country to avoid prosecution.” The State argues that Defendant’s ground for failing to appear in court were unreasonable; therefore, Appellant cannot recover its bond.

B. Analysis

1. Maryland Rule 4-217

i. Reasonable Grounds for Defendant’s Failure to Appear

We initially note that the essential issue in this case is legal, not factual. Accordingly, it is not an issue resolved by the introduction of more facts in a hearing. Appellant contends that its Petition to Strike should be granted because the State subsequently adding the first-degree murder charge constitutes “reasonable grounds for Defendant’s failure to appear” in court. Appellant argues that had Appellant been informed that the State was going to charge Defendant with first-degree murder, Appellant would not have posted Defendant’s bail bond. To support its argument, Appellant relies on Maryland Rule 4-217(i)(3).

Under the Maryland Rules a surety is defined as “a person other than the defendant who, by executing a bond, guarantees the appearance of the defendant and includes an uncompensated or accommodation surety. Md. Rules 4-216.1(a)(9).

Maryland Rule 4-217 prescribes the procedure for forfeiting bail bonds and authorizes the striking of a forfeiture, once entered, for cause. It provides, as relevant:

(i) Forfeiture of Bond.

(1) *On Defendant's Failure to Appear--Issuance of Warrant.* If a defendant fails to appear as required, the court shall order forfeiture of the bail bond and issuance of a warrant for the defendant's arrest and may set a new bond in the action. The clerk shall promptly notify any surety on the defendant's original bond, and the State's Attorney, of the forfeiture of that bond and the issuance of the warrant.

...

(3) *Striking Out Forfeiture for Cause.* If the defendant or surety can *show reasonable grounds for the defendant's failure to appear*, notwithstanding Rule 2-535, the court shall (A) strike out the forfeiture in whole or in part; and (B) set aside any judgment entered thereon pursuant to subsection (5)(A) of this section, and (C) order the remission in whole or in part of the penalty sum paid pursuant to subsection (4) of this section.

Maryland Rule 4-217(i) (emphasis added).

The Maryland Court of Appeals has stated that “the burden of demonstrating ‘reasonable grounds’” to strike a bail bond forfeiture “lies with the surety who seeks to strike a bond forfeiture.” *Big Louie Bail Bonds, LLC v. State*, 435 Md. 398, 407 (2013) (citing *Alleghany Mut. Cas. Co. v. State*, 234 Md. 278, 282 (1964)). “Under this rule, the court is required to strike out the forfeiture... whenever either the defendant or the surety shows reasonable grounds for the defendant's failure to appear.” *Wiegand v. State*, 363 Md. 186, 196-97 (2001). Moreover, the Court of Appeals has stated that when assessing if there are reasonable grounds for the defendant's nonappearance the focus is on “the validity of any reasons for that nonappearance, rather than on the bondsman *or issues affecting the bondsman's assessment of the risk of posting bond.*” *Id.* (Emphasis added). Finally, the Maryland Court of Appeals has interpreted the term “reasonable grounds” in the context of the court's exercise of discretion:

The requirement that ‘reasonable grounds’ be shown for the nonappearance of the defendant obviously means something less stringent than an absolutely compelling reason, and we think that in exercising the discretionary power conferred by [the predecessor of CP § 2–508], the court should keep this in mind, particularly where, as here, there is *no showing of a deliberate purpose to evade the process of the court*. The discretion thus committed is a sound one, and not an arbitrary or absolute discretion precluding review by this Court.

Alleghany Mut. Cas. Co., 435 Md. at 285-86 (emphasis added).

In this case, Defendant failed to appear at the Show Cause Hearing and was not given a reasonable opportunity to provide “reasonable grounds” for his nonappearance. As noted above, when assessing reasonable grounds for a defendant’s nonappearance in court the focus is on “the validity of any reasons for the nonappearance.” Appellant also did not provide any reason for Defendant’s nonappearance at the Show Cause Hearing. Moreover, the State amending Defendant’s indictment to add a first-degree murder charge was not determined to be a reasonable ground for Defendant’s failure to appear in court. Indeed, the State amending a defendant’s indictment to add a more serious charge is not an excuse for a defendant’s failure to appear in court. However, we do not know if the Defendant had notice of the charges. We do not know if he had other reasons for not appearing. It is not clear whether Defendant’s actions were a deliberate action to “evade the process of the court” or that Defendant’s conduct qualified as a reasonable ground to strike the bail bond forfeiture pursuant to Maryland Rule 4-217(i)(3).

Accordingly, under a narrow reading of the express provisions of Maryland Rule 4-217(i)(3), it is unclear whether Appellant would have met its burden of showing reasonable grounds for a defendant’s nonappearance. However, as we will explain, common law bond

surety principles, when considered alongside the inherent limitations and intent of Maryland’s statutory structure for pretrial release and bond provisions, render a mechanical reading of Maryland Rule 4-217(i)(3) inappropriate in this case.

2. Bail Bond Agreement

ii. Material Increase in Risk Under Bail Bond Agreement

Appellant argues that its Petition to Strike should be granted because “(1) courts across the country have held that a material change in risk to the surety after the bond has been posted constitutes cause to discharge the bond”; (2) Maryland has recognized this principle of law; and (3) the additional first-degree murder charge against Defendant amounted to a material increase “in the risk to the surety that warrants discharge of the bond.” Specifically, Appellant cites to case law from Florida, Colorado, and New Jersey to show that “a modification of the undertaking of a calculated risk and modification that materially increase that risk have the effect of terminating the surety’s obligation on the bond.” To support its second argument Appellant relies on *Wiegand v. State*, stating that the Maryland Court of Appeals adopted the principle “that where the State materially increase the risk to the surety under a bond, the surety is entitled to a discharge of that bond.” Appellant contends that the State’s addition of one count of first-degree murder “carries a ‘significantly increased potential penalty’ [and] materially increased the risk under the bond.” Appellant asserts that at the time Appellant “evaluated, and agreed on the risk of, [Defendant’s] \$150,000 bond,” Defendant was facing a maximum of 25 years’ incarceration. Appellant contends that when Defendant was initially charged he was “just

thirty-one years old.” Appellant asserts that if Defendant was convicted of first-degree assault and received the maximum penalty, he would have been 56 years old upon release, “giving him plenty of time to resume his life.” Further, Appellant notes that “very few defendants ever receive a sentence of twenty-five years for first-degree assault, and if they do, much of it usually is suspended.” Moreover, Appellant argues that by the State adding the first-degree murder charge, Defendant was facing a mandatory sentence of life imprisonment, which decreased the likelihood of Defendant appearing in court. Finally, Appellant asserts that the terms of the bail bond agreement do not ensure that Appellant guarantees the appearance of Defendant to answer for charges which materially increased Appellant’s risk under the bond.

A bail bond is a contract of suretyship “a tripartite agreement among a principal obligor, his obligee, and a surety.” *General Motors Acceptance Corp. v. Daniels*, 303 Md. 254, 259 (1985). A change in the agreement by the principal and the obligee without the authorization of the surety, “when it materially changes the risk, entitles the surety to discharge” of its obligation. The Maryland Court of Appeals has addressed situations in which the surety is discharged from its obligation.

[T]he [surety] is discharged from any unperformed duties pursuant to the secondary obligation:

(i) if the modification creates a substituted contract or imposes risks on the [surety] fundamentally different from those imposed pursuant to the transaction prior to the modification.

Wiegand v. State, 363 Md. 186, 198-199 (2001) (citing Restatement (Third) of Suretyship & Guaranty (1995) § 41). Additionally, the Court of Appeals has stated that “the obligation of the surety on a bail bond may be discharged: by the act of God, act of the obligee, or act

of the law.” *Tyler v. Capitol Indem. Ins. Co.*, 206 Md. 129, 138 (1955).⁶ The “obligee” under a bail bond is the State. *Young v. State*, 7 G. & J. 253, 255 (1835).

Thus, we must determine whether the State’s amending Defendant’s indictment to add the first-degree murder charge constituted a modification to the original bail bond agreement. See *Wiegand*, 363 Md. at 199. We note that when Appellant agreed to post Defendant’s bond, Defendant was facing five counts of first-degree assault and five counts of second-degree assault. A person who is convicted of first-degree assault is guilty of a felony “and on conviction is subject to imprisonment not exceeding 25 years.” Md. Code, CRIMINAL LAW, § 3-202 (b). At the time Appellant posted Defendant’s bond, there was a possibility, though admittedly remote, of Defendant serving consecutive sentences totaling up to 125 years in prison.

While we would have little trouble in concluding as a matter of reason that the addition of a murder charge would be very likely to increase Appellant’s risk, thereby materially altering Appellant’s obligation and creating a substituted bond contract, we need not rely solely on our common sense. Instead, the dictates of MD Rule 4-216(d)(1) provide an additional bases for Appellant’s contention. Namely, under that rule, a defendant charged with an offense that carries a maximum penalty of life imprisonment (i.e. First-degree murder) could not have been released on bond by a district court commissioner, or by a judge prior to a trial date being set:

⁶ “If the principal dies, this act of God discharges the surety; if the principal is arrested in the State where the obligation is given and his extradition to another State is granted, the surety would be discharged by act of law.” *Tyler v. Capitol Indem. Ins. Co.*, 206 Md. 129, 138 (1955).

(d) Defendants Eligible for Release Only by a Judge.

(1) A defendant charged with an offense for which the maximum penalty is life imprisonment or with an offense listed under Code, Criminal Procedure Article, § 5-202(a), (b), (c), (d), (e), (f) or (g) may not be released by a District Court Commissioner, but may be released before verdict or pending a new trial, if a new trial has been ordered, only by a judge.

MD Rule 4-216(d)(1). In the case at bar, Defendant was released on bond by the District Court Commissioner, and his bond was later lowered by a district court judge before a trial date had been set. Thus, when Appellant entered into the bond agreement, they had no practical reason to believe that the defendant would be subject to a charge which would carry the penalty of life imprisonment. To hold that a surety to a bond should anticipate imposition of an additional criminal penalty, which if originally charged would have placed a defendant beyond the ambit of pretrial release, would appear to stretch Maryland's bond provisions beyond those provision's intended purpose. Likewise, to hold a surety to the bond forfeiture provisions of MD Rule 4-217, where the underlying criminal penalty would render a defendant ineligible for a bond under MD Rule 4-216, seems to run contrary to the statutory structure.

Regardless, the State points to the language of the bond agreement which required Defendant to appear "in any court in which the charges are pending, or in which a charging document *may be filed* based on the *same acts or transactions....*" Citing MD Rule 4-217(f). Based on this language, the State argues that "[Appellant] did not merely agree to produce [Defendant] in court to face certain specific charges, but to face any charges arising out of the events that led to his arrest." We admit, the State's position is compelling given the

ostensible meaning of the text. However, when considered alongside Maryland’s rules for amending a charging document, *see* MD Rule 4-204, and common law bond principles, the State’s interpretation of the bond agreement becomes less appealing. We explain.

We first briefly add the tail end of MD Rule 4-217 for clarity, which in full form states:

(f) Condition of Bail Bond. The condition of any bail bond taken pursuant to this Rule shall be that the defendant personally appear as required in any court in which the charges are pending, or in which a charging document may be filed based on the same acts or transactions, *or to which the action may be transferred, removed,* or if from the District Court, appealed, and that the bail bond shall continue in effect until discharged pursuant to section (j) of this Rule.

(Emphasis added). After transferring the case from district court to circuit court for grand jury proceedings, the grand jury indicted Defendant on his original assault charges, and related firearms offenses. At this point, Appellant had a legal basis to expect that no additional charges would be added through amendment to the indictment, absent Defendant’s consent. *See* MD Rule 4-204, discussion *infra*. However, the State was thereafter permitted to amend the indictment, without notice to Appellant, adding a charge which clearly changed the character of the charged offenses. In fact, the State was curiously permitted to do so without Defendant’s appearance or consent, contrary to the requirements of MD Rule 4-204. Under Rule 4-204:

On motion of a party or on its own initiative, the court at any time before verdict may permit a charging document to be amended *except that if the amendment changes the character of the offense charged, the consent of the parties is required.* If amendment of a charging document reasonably so requires, the court shall grant the defendant an extension of time or continuance.

(Emphasis added). The Court of Appeals has noted that “Rule 4–204 now details the exclusive means to amend an indictment.” *Johnson v. State*, 427 Md. 356 (2012). In our view, this unilateral act by the State places this case squarely within the purview of the common law grounds for discharge of a bond based on an “act of the obligee.” Accordingly, we turn to review the common law cases as they apply to the case *sub judice*.

Appellant “contends that courts across the country have held that a material change in the risk to the surety after the bond has been posted constitutes cause to discharge the bond.” Appellant supports this contention by citing case law from Florida, Colorado, and New Jersey that holds that, “where the charges are substantially changed after the surety agrees to take on the risk of the bond, the surety is entitled to be discharged from its obligations under the bond.” *See United States v. Galvez-Urriarte*, 709 F.2d 1323 (9th Cir. 1983); *see also People v. Jones*, 873 P.2d 36 (Colo. Ct. App. 1994); *American Bankers Ins. Co. v. Monroe Cnty.*, 644 So.2d 560 (Fla. Dist. Ct. App. 1994).⁷ In *State v. Sedam*, cited in the Appellant’s brief, the court found that the bondsman was entitled to have the forfeited bond reinstated because the terms of the bail bond agreement provided:

If the amount of the bond required for the person’s appearance or the other conditions are modified from the above amount or conditions, then this bond is null and void, and a new bond in the required amount and/or with the modified other conditions must be posted at the time.

State v. Sedam, 34 Kan. App. 2d 624,625 (2009).

⁷ Appellant’s brief does not cite to any cases, with the exceptions of *State v. Sedam*, where the court addresses the content of the bail bond agreement or whether the bond allowed filing amendments to indictments.

We note, however, that the terms in the bail bond agreement used in *State v. Sedam* are not the same terms provided by the bail bond agreement at issue here. As noted above, the language used in the bail bond agreement in this case provides that Appellant guarantees Defendant’s appearance “as required, in any court in which the charges are pending, or in which a *charging document may be filed* based on the same acts or transactions.” In our case, the bond agreement does not state that the agreement will be null and void if the defendant would face an increase in his potential punishment following additional charges. *Accord People v. International Fidelity Ins. Co.*, 185 Cal. App. 4th 1391, 1398 (2010) (“[t]he addition of charges based on the same acts alleged in an original complaint, which charges materially increase the risk faced by the surety, does not automatically exonerate the bond where the express language of the bond allows for amendment of the charges.”).

Notwithstanding, we find *People v. International Fidelity Ins. Co.* to be distinct from the present case. In *People v. International Fidelity Ins. Co.*, the surety agreed under the bond contract:

that the above-named defendant will appear in the above-named court on the date set forth to answer any charge in any accusatory pleading based upon the acts supporting the complaint filed against him/her *and all duly authorized amendments thereof*, in whatever court it may be prosecuted

Id. at 1395 (emphasis added). Thus, the *People* court held that under the express language of the bond, the surety agreed to ensure the defendant's presence even though the original criminal information was amended. Unlike the bond in *People*, the bond in our case did not expressly include Appellant’s obligation to ensure appearance for proceedings held

under amended charging documents. This is likely the case because an amendment which materially alters the charge is a material alteration to the underlying agreement would have the effect of re-writing the bond agreement to include the language “and all duly authorized amendments thereof.” As discussed, in Maryland, when an amendment is sought that materially alters the charges alleged, the defendant’s consent is necessary. Moreover, such an amendment would be likely to trigger the application of MD Rule 4-216.3(b), which states:

After a charging document has been filed, the court, on motion of any party or on its own initiative and after notice and opportunity for hearing, may revoke an order of pretrial release or amend it to impose additional or different conditions of release, subject to the standards and requirements set forth in Rule 4-216.1. If its decision results in the detention of the defendant, the court shall state the reasons for its action in writing or on the record. A judge may alter conditions set by a commissioner or another judge.

MD Rule 4-216.3(b). Here, Appellant was not provided notice of the amendment, and consequently, did not have the opportunity to move to recommend different terms for the release. Moreover, as previously discussed, the proper application for the terms of release at the pretrial stage would have rendered Defendant ineligible for release on bond and would have placed Defendant under the custody of the State.

In a more applicable case, *U.S. v. Galvez-Uriarte*, 709 F.2d 1323 (9th Cir. 1983), the 9th Circuit, relying on Supreme Court precedent, demonstrates a scenario when an act of the obligee (the State) can relinquish a surety’s obligation under a bond agreement. The court noted that

The Supreme Court has stated that a bail bond is an obligation that runs in favor of the Government, and that the Government may not enforce the

obligation if its actions materially increase the risk of the surety without the surety's knowledge and consent.

Id. at 1324 (citing *Reese v. United States*, 76 U.S. (9 Wall.) 13, 21–22, 19 L.Ed. 541 (1869)). The court held that an out of court action by a U.S. attorney, which allowed the defendant to return to Mexico, precluded the government from thereafter seeking to enforce the underlying bond agreement against a surety. *Id.* In our case, the State's addition of charges carrying a life sentence "materially increase[d] the risk of the [Appellant]," and did so "without [Appellant's] knowledge and consent." To allow such unilateral action to the detriment of insurers who undertake to assess the risk of a bond would run contrary to public policy underlying the bond provisions in Maryland.

By allowing the State to impose materially increased penalties through unilateral amendment under Maryland's standard bond agreements, we would force sureties to take on substantially greater risks. This increased risk would make it more difficult for accused individuals to secure bond, subjecting them to greater risk of imprisonment at a stage where no charges have been sustained against them beyond the level of probable cause. Where, as in this case, the State acts to substantially increase criminal penalty through unilateral amendment, such an act of the obligee (the State) can relinquish a surety's obligation under a bond agreement. In this case, we hold that the State's addition of a murder charge through unilateral amendment of the indictment effectively substituted the bond agreement, and thereby relinquished Appellant of its duties under the bond agreement.

Accordingly, we hold that the circuit court erred in failing to strike the forfeiture of the bond agreement after the State unilaterally amended the charges upon which the bond

was made, included a charge that would have precluded Defendant from bond eligibility when the bond was entered.

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE COUNTY REVERSED.
CASE REMANDED TO THAT COURT
WITH INSTRUCTIONS TO STRIKE THE
FORFEITURE, DISCHARGE THE BOND
AND REMIT THE BAIL TO THE
APPELLANT.**