

S230213

SUPREME COURT
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IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

Frank A. McGuire Clerk

Deputy

COUNTY OF LOS ANGELES,
Plaintiff-Appellant,

v.

FINANCIAL CASUALTY & SURETY, INC.,
Defendant-Respondent.



After a Decision by the Court of Appeal,
Second Appellate District, Division Four
Case No. B257660 (LASC No. SJ3898)

OPENING BRIEF ON THE MERITS

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ISSUE FOR REVIEW

Whether the authority granted to a jailer under Penal Code section 1269b, "to set the time and place for the appearance of the arrested person before the appropriate court and give notice thereof" makes the appearance in that court on that date "lawfully required" for purposes of forfeiting bail under Penal Code section 1305(a)(4).

INTRODUCTION

A criminal defendant was present in court ,in custody, for arraignment when the court set a date for a pre-trial conference. Before the pre-trial, the defendant bailed out. The bail bond stated the defendant was ordered to appear at the time and date that the court had previously set for the pre-trial. When the defendant did not appear, the court forfeited bail.

Bail forfeiture is governed by Penal Code¹ §1305, which provides that bail is to be forfeited when a defendant fails to appear for arraignment, trial, judgment, execution of judgment following appeal, and "[a]ny other occasion prior to the pronouncement of judgment if the defendant's presence in court is lawfully required." The issuance of a bail bond is governed by §1269b, which provides that a jailor may accept bail and set

¹ All further statutory references are to the Penal Code unless other specified.

the time and place for the defendant to appear – and if the defendant fails to appear, §1305 applies.

Section 1269b authorizes a jailor to set the time and place for a defendant to appear upon acceptance of bail and release from custody. Section 1305 authorizes forfeiture of bail if a defendant fails to appear, without sufficient excuse, when his appearance is lawfully required. Therefore, a defendant's presence is lawfully required at the time and place stated on the bail bond, and if the defendant fails to appear, without sufficient excuse, bail should be forfeited.

STANDARD OF REVIEW

"Ordinarily, appellate courts review an order [on] a motion to vacate the forfeiture of a bail bond under an abuse of discretion standard. When the appellate court is deciding only legal issues, however, such as jurisdictional questions and matters of statutory interpretation, the abuse of discretion standard does not apply. When the facts are undisputed and only legal issues are involved, appellate courts conduct an independent review."

(People v. International Fidelity Insurance Company (2012) 204

Cal.App.4th 588, 591 (internal citations omitted).)

The issue here is one of statutory interpretation; whether, pursuant to a bail bond issued under the authority of §1269b, a defendant's presence in court is "lawfully required" under §1305(a)(4). Thus, the matter requires an independent review.

COMBINED STATEMENT OF THE CASE AND FACTS

Criminal defendant Sandra Chavezgarcia ("Chavezgarcia") appeared in court, in custody, for arraignment on November 29, 2012. (Clerk's Transcript "CT" 82-83.) The court continued the matter to January 3, 2013, for a pre-trial conference. (CT 102.) Chavezgarcia was remanded to custody. (CT 83.)

On December 19, 2012, the surety, Financial Casualty & Surety, Inc. ("Financial"), acting through an agent, posted bond for Chavezgarcia's release. (CT 4.) Under the terms of the bail bond, Financial undertook that Chavezgarcia would appear in court on January 3, 2013, or it would be subject to forfeiture of the bond and entry of summary judgment. (CT 5.)

On January 3, 2013, Chavezgarcia failed to appear, without sufficient excuse, and the court forfeited bail. The court issued a bench warrant and noticed Financial and its agent of the forfeiture. (CT 83.)

The appearance period² – the time within which Financial could surrender Chavezgarcia or otherwise move to vacate the forfeiture – was extended twice, but ultimately expired without the forfeiture having been

² "The 185 days after the date the clerk of the court mails a notice of forfeiture (180 days plus five days for mailing) to the appropriate parties is known as the 'appearance period.'" (*People v. American Contractors Indemnity Co.* (2004) 33 Cal.4th 653,658)

set aside. (CT 83-85.) The court entered summary judgment on the forfeited bond and sent notice. (CT 22.)

Financial filed a motion to set aside the summary judgment on the grounds that Chavezgarcia had not been "lawfully required" to appear on January 3, 2013. (CT 32-68 and 86.) The County opposed the motion and argued that Chavezgarcia's appearance had been "lawfully required." The trial court, which did not discuss whether Section 1269b applied, granted the motion and set aside summary judgment. (Reporter's Transcript 4-5; CT 124)

The County appealed the ruling setting aside summary judgment on the bond. (CT 127.) The County contended, *inter alia*, that Chavezgarcia had been lawfully required to appear pursuant to Section 1269b. Following oral argument, the Court of Appeal filed an opinion affirming the lower court's order. The opinion held "that a notation on the bail bond form that the defendant was ordered to appear in court on a certain date does not mean the defendant was 'lawfully required' to appear for purposes of bail forfeiture under section 1305."

The County filed a Petition for Rehearing, which the Court of Appeal denied without comment. The County filed a Petition for Review, and on January 13, 2016, this Court granted review.

ARGUMENT

A DEFENDANT IS LAWFULLY REQUIRED TO APPEAR IN COURT ON THE DATE SHOWN ON THE BOND PURSUANT TO PENAL CODE SECTION 1269b

"The object of bail and its forfeiture is to insure the attendance of the accused and his obedience to the orders and judgment of the court."

(People v. Wilcox (1960) 53 Cal.2d. 651, 656-57; People v. Safety National Casualty Corp. (2010) 186 Cal.App.4th 959, 965 ["purpose of posting bail is to insure the defendant will make his appearances in court and obey the court's orders"].)

"[A] bail bond may be forfeited only if the provisions of section 1305 are satisfied." *(People v. Sacramento Bail Bonds (1989) 210 Cal.App.3d 118, 120.)* Section 1305 states in part:

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, subd.(a).) Section 1305 requires forfeiture upon the defendant's first unexcused non-appearance, if the defendant's appearance is lawfully required.

Penal Code §1269b addresses the following issues: "Acceptance of bail; notice of appearance of prisoner; schedule of bail; discharge of prisoner; disposition of bail; forfeiture." It provides in pertinent part:

(a) The officer in charge of a jail . . . an officer in charge of a sheriff's department or police department . . . an employee of a sheriff's department or police department . . . and the clerk of the superior court may approve and accept bail . . . to issue and sign an order for the release of the arrested person, and to set a time and place for the appearance of the arrested person before the appropriate court and give notice thereof.

. . . .

(g) Upon posting bail, the defendant or arrested person shall be discharged from custody as to the offense on which the bail is posted.

(h) If a defendant or arrested person so released fails to appear at the time and in the court so ordered upon his or her release from custody, Sections 1305 and 1306 apply.

(Penal Code §1269b, subds. (a), (g), (h).)

The question here is whether a bail bond (directing a defendant to appear) satisfies §1305's requirement that a defendant's appearance is lawfully required, thus making bail forfeiture appropriate if the defendant fails to appear without excuse. Section 1269b gives the jailor authority to set the time and place for a defendant's appearance. Section 1269b provides that §1305 applies if a defendant fails to appear as ordered by the

jailer. Therefore, a defendant's appearance in court – on the date set by the jailor and shown on the bail – is lawfully required under §1305.

1. THE PLAIN LANGUAGE AND LEGISLATIVE HISTORY OF THE STATUTE REQUIRE THE DEFENDANT TO APPEAR

"The fundamental purpose of statutory construction is to ascertain the intent of the lawmakers so as to effectuate the purpose of the law. In order to determine this intent, we begin by examining the language of the statute." (*People v. Ranger Insurance Co.* (1998) 61 Cal.App.4th 812, 809.)

"The language must be construed in the context of the statute as a whole and the overall statutory scheme, and we give significance to every word, phrase, sentence, and part of an act in pursuance of the legislative purpose." (*People v. Indiana Lumbermens Mutual Ins. Co.* (2010) 190 Cal.App.4th 823, 826-27.) "It is axiomatic that in the interpretation of a statute where the language is clear, its plain meaning should be followed." (*County of Madera v. Ranger Insurance Company* (1991) 230 Cal.App. 3d 271, 275.)

Here, the language of §1269b is clear, and its meaning could not be more plain. The statute provides that the jailor may set the time and place for the defendant to appear, and that if the defendant does not appear "in the court so ordered," §§1305 and 1306 apply. If bail forfeiture is not appropriate when a defendant fails to appear on the date and at the time shown on his or her bond, 1269b(h) would be rendered meaningless.

Moreover, a historical review of the statute demonstrates the Legislature's original intent behind it: To empower others besides a judge to compel a defendant's appearance in court, without a specific court order to appear, when a defendant bails out. If a defendant fails to appear at the hearing set by the jailor, without sufficient excuse, bail forfeiture is appropriate.

In its original 1945 version, the statute read, "In a justice's court of Class A, the clerk of the court shall, in the absence of a judge of said court, have authority to accept bail for the appearance before said court....[¶] The authority to accept bail as in this section provided shall include authority to approve the same, to issue and sign an order for the release of the defendant, and to set a time and place for the appearance of the defendant before the appropriate division or judge of such court and give the defendant notice thereof." (Stats. 1945, ch. 363, §1.) From the time it was enacted, §1269b was intended to permit defendants to bail out of jail without having to first go before a judge, and to ensure their appearance at the next court hearing. While the statute has undergone a number of revisions, including giving jailers the same authority as court clerks, its purpose has not changed.

The following was among the provisions added in 1959: "If a defendant or arrested person so released fails to appear at the time and in the court so ordered upon his release from custody, the court...may forfeit

the cash bail or surety bond...and if the bail is a surety bond the surety company is obligated as provided by Section 1306 of the Penal Code, subject to the right of the court to set aside the forfeiture as provided by law." (Stats. 1959, ch. 1396, §1.) Thus, the Legislature intended clerks and jailers be given the authority to set the time and place for the defendant's appearance – without a court order – and the defendant would be "lawfully required" to appear at the time and place so set.

Section 978.5 also supports the conclusion that bail forfeiture is appropriate if a defendant fails to appear as ordered by the jailer. Section 978.5, governs when a court may issue a bench warrant for a defendant's failure to appear. It provides that if a defendant fails to appear at the specific time and place ordered by the jailer (by "a person authorized to accept bail"), that a bench warrant may be issued. The statute states in part:

A bench warrant of arrest may be issued whenever a defendant fails to appear in court as required by law including, but not limited to, the following situations:

.....
If the defendant is released from custody on bail and is ordered by a judge or magistrate, or other person authorized to accept bail, to personally appear in court at a specific time and place.

(§978.5, subd. (a)(2).) A defendant's appearance is "required by law" for purposes of issuing a bench warrant if she fails to appear pursuant to an order by a person authorized to accept bail (e.g. the jailer). In almost every

case, the issuance of a bench warrant goes hand-in-hand with the order of forfeiture. It must follow that a defendant's appearance is "lawfully required" for purposes of forfeiting bail if she fails to appear pursuant to an order by the jailer. This is the only conclusion that gives effect to the plain language of, and the legislative history behind, §1269b.

**2. WITH THE EXCEPTION OF THE OPINION
BELOW, CASE LAW REQUIRES THE DEFENDANT
TO APPEAR**

With the exception of the Opinion, every case of which Petitioner is aware finds that the date on the bail bond – under the authority of §1269b – makes the defendant's appearance in court "lawfully required."

One case that specifically addresses §1269b is *People v. Ranger Insurance Co.* (2006) 145 Cal.App.4th 23 ("*Ranger*"). In *Ranger*, the defendant "was ordered by the jailor and notified by the bond to appear in court" on a certain date. (*Id.* at 25.) But before that given date, the police department sent a letter to the defendant advising her not to appear because a complaint had not yet been filed. The letter told her to appear on a new date. (*Id.* at 25-26.) Before that new date, the police department sent the defendant another letter advising her of another delay and telling her to appear on yet a different date. (*Id.* at 26.) The defendant appeared on the date in the second letter, but failed to appear as ordered at the subsequent hearing. The trial court forfeited bail and later entered summary judgment.

(*Ibid.*) The surety's motion to set aside the summary judgment was denied, and the surety appealed. (*Id.* at 26-27.)

The *Ranger* Court agreed with the surety's argument that the defendant's "failure to appear on the arraignment date set by the jailor deprived the court of jurisdiction to thereafter forfeit the bond because there were no court orders continuing the arraignment date." (*Id.* at 27-28.) The *Ranger* Court explained that the defendant "was ordered by the jailor to appear [], and thus was lawfully required to appear for arraignment on that date." (*Id.* at 30, citing §1269b, subs.(a) and (h).) The *Ranger* Court held that because a complaint was not filed within the 15 day period, the bond must be exonerated pursuant to §1305. Thus, the *Ranger* Court's analysis establishes that a defendant is lawfully required to appear in court on the date set by the jailor and shown on the bond.

People v. American Surety Insurance Co. (2009) 178 Cal.App.4th 1437 ("*American Surety*"), is similar to *Ranger*; the *American Surety* Court stated that it was "governed by *People v. Ranger*." (*Id.* at 1439.) In *American Surety*, the defendant was ordered by the bail bond to appear on a certain date, but there is no record of anything occurring on that date. The district attorney purportedly sent a letter to the defendant advising him to appear on a later date, but there was no evidence the letter was sent. (*Ibid.*) The defendant did not appear on the date stated in the DA's letter, and the

court forfeited bail. The surety's motion to vacate forfeiture was denied and the summary judgment was entered. (*Ibid.*)

The *American Surety* Court's analysis presumed the defendant was lawfully required to appear on the date set by the jailor. But because there was no court order continuing that date, the trial court lost jurisdiction over the bond. (*Id.* at 1440.) Just like in *Ranger*, the appellate court found that the authority granted to the jailor in §1269b (to set the time and place for the defendant's appearance) lawfully required the defendant to appear. However, a letter to the defendant from the police department (as in *Ranger*) or from the DA (as in *American Surety*) did not lawfully require the defendant to appear; such letters were not equivalent to the statutory authority granted to the jailor.

County of Los Angeles v. Fairmont Specialty Group (2008) 164 Cal.App.4th 1018 ("*Fairmont*"), also presumes that §1269b compels a defendant's appearance for bail forfeiture purposes. In *Fairmont*, the defendant did not appear on the date reflected on the bond. (*Id.* at 1021.) No complaint had been filed and there is no record of any hearing taking place on that date. Thereafter, a complaint was timely filed, and the defendant appeared for arraignment. (*Ibid.*) The defendant appeared for several subsequent hearings but failed to appear at sentencing, and the court forfeited bail. (*Id.* at 1021-1022.) The surety moved to set aside the forfeiture; it argued the court did not have jurisdiction to forfeit the bond at

sentencing because the court lost jurisdiction by not declaring a forfeiture on the date stated on the bond. (*Id.* at 1024.)

The *Fairmont* Court explicitly agreed with the surety's assertion that §1269b, subd.(a) gives jailers the authority to set the time and place of a defendant's initial appearance upon release from custody on bail, and that if the defendant fails to appear, the statutes governing bail forfeiture and entry of summary judgment apply. (*Id.* at 1024; see §§1305 and 1306.) But the *Fairmont* Court explained that §1305, subd.(a) provides that "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." (*Id.* at 1025.) Like *Ranger*, *Fairmont's* holding is dependent upon the 15-day provision in §1305(a). The court explained that the 15-day provision was added to eliminate the need for the defendant to appear in court on the date specified in the bond if no charges had yet been filed. (*Ibid.*) The *Fairmont* Court stated :

As a practical matter, what the 15-day provision means is, if no criminal complaint has been filed by the date set by the jailer for the first court appearance/arraignment, bail can neither be exonerated nor forfeited on that date.

(*Ibid.*) It follows that had the complaint been filed by the date on the bond, the defendant's appearance would have been legally required. *Fairmont*

clearly finds that jailors have the authority to order and notice a defendant's appearance, and that bail may be forfeited if the defendant fails to appear.

Even in cases that do not specifically address §1269b, there is a clear presumption that the defendant's appearance in court is required on the date shown on the bond. (*People v. Accredited Surety and Casualty Co.* (2012) 209 Cal.App.4th 617, 622 [surety guarantees that defendant will appear at a specified time and place, and generally "such time and place for the appearance is set and notice thereof given to the defendant when bail is accepted and the defendant is discharged from custody"]; *People v. Indiana Lumbermens Mutual Ins. Co.*, *supra*, 190 Cal.App.4th at 825 [defendant appeared in court as ordered upon posting bail]; *People v. Ranger Insurance Co.*, *supra*, 66 Cal.App.4th at 1551 [defendant appeared for arraignment on date reflected on the bond].) It seems abundantly clear that the bail bond makes the defendant's presence in court "lawfully required."

The only case that found a defendant's appearance was not required on the date shown on the bail bond is *People v. National Automobile Insurance Company* (1977) 77 Cal.App.3d Supp.7; however, the case is distinguishable based on the limited facts provided. In *National Automobile*, the bond stated the defendant was to appear on December 1, 1975, but the docket showed an appearance date of December 3, 1975. There was no court proceeding on December 1st, but on December 3rd, the defendant failed to appear and the court forfeited bail. The surety argued

that the court lost jurisdiction over the bond by not declaring a forfeiture on December 1st. The *National Automobile* Court held that bail could be forfeited only when a defendant fails to appear on a *date* ordered by the court. (*Id.* at 9.) The court had set a date of December 3rd, not December 1st, thus the forfeiture was proper.

In spite of this finding, *National Automobile* does not undermine the conclusion that a defendant is lawfully required to appear in court on the date shown on the bond – *National Automobile* does not address whether the defendant had a duty to appear pursuant to §1269b. (*Id.* at p. 9.) As the *Ranger* Court explained:

[National Automobile] do[es] not mention (let alone discuss) section 1269b, [thus it is] not inconsistent with our conclusion that [the defendant] was lawfully required to appear on [the date shown on the bond.]

(*Ranger, supra*, 145 Cal.App.4th at 27, fn 4, parenthesis in original.) "It is axiomatic that cases are not authority for propositions not considered."

(*People v. Avila* (2012) 38 Cal.4th 491, 566, citing *People v. Ault* (2004) 33 Cal.4th 1250, 1268, fn. 10; see also *People v. Financial Casualty & Surety, Inc.* (2015) 239 Cal.App.4th 440, 453.) Section 1269b makes a defendant's appearance lawfully required.

The appellate court in this matter equated the "bail bond form with the date of the hearing filled in" with the DA's letter in *American Surety* and the police department's letter in *Ranger*. In doing this, the court

misinterpreted both *Ranger* and *American Surety*, and disregarded all the cases that take for granted the authority of §1269b.

CONCLUSION

The rules of statutory construction require that courts honor the plain meaning of §1269b by finding that a defendant's presence in court is lawfully required under §1305(a)(4) on the date shown on the bond. All case law, but for the opinion below, has found this to be so. Thus, when a defendant fails to appear (without sufficient excuse) on the date shown on their bond, bail forfeiture is appropriate. The County respectfully asks this Court to reverse the opinion of the Court of Appeal.

DATED: February 16, 2016

Respectfully submitted,

MARY C. WICKHAM
County Counsel

By



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Attorneys for County of Los Angeles

CERTIFICATE OF WORD COUNT PURSUANT TO RULE 8.204(c)

The text of this document consists of 4,823 words as counted by the Microsoft Office Word 2010 program used to generate this document.

DATED: February 16, 2016

Respectfully submitted,

MARY C. WICKHAM
County Counsel

By



JOANNE NIELSEN
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Attorneys for County of Los Angeles

DECLARATION OF SERVICE
B257660/SJ3898

STATE OF CALIFORNIA, County of Los Angeles:

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 February 16, 2016, I served the attached

OPENING BRIEF ON THE MERTIS

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:

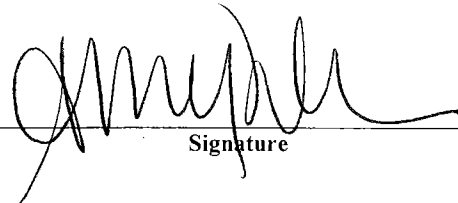
(BY OVERNIGHT DELIVERY) I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons on the service list. I placed the envelope or package for collection and overnight delivery at an office or regularly utilized drop box of the overnight delivery carrier.

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

Executed on February 16, 2016, at Los Angeles, California.

Anna Pacheco

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and, for personal service by a Messenger Service,
include the name of the Messenger Service



Signature

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B257660/SJ3898

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