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ISSUE PRESENTED

Whether the authority granted to a jailor 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) subdivision (4).

STATEMENT OF THE FACTS AND CASE

On November 29, 2012 the defendant was present in court in custody. (CT 2-3) The court continued the case to January 3, 2013 for a pre-trial conference. (CT 3) The transcript reflects that the defendant was not ordered to appear at the January 3, 2013 pre-trial conference. (CT 101-103) The docket contains a boilerplate entry ordering the defendant to appear on the next court date. (CT 3)

On or about December 19, 2012 Bail Now Bail Bonds posted bond number FCS200-1070698 as an agent of Financial Casualty & Surety, Inc. for the release of the defendant from custody. The bail bond reflected an appearance date of January 3, 2013. (CT 3)

On January 3, 2013 the defendant was not present in court for the pre-trial conference, but was represented by counsel. The Court ordered bail forfeited. (CT 13, CT 42, ln 23)

On January 3, 2013 the clerk of the court mailed a notice of forfeiture to the parties. (CT 14)

On July 25, 2013 the court granted an extension of time October 23, 2013. (CT 18)

On November 20, 2013 the court granted a further extension of time through December 27, 2013. (CT 21)

On January 8, 2014 a summary judgment was entered against the parties. Notice of entry was given January 9, 2014. (CT 22)

On February 20, 2014 the surety filed a motion to set aside summary judgment. (CT 30, 66)

On April 14, 2014 the County filed an opposition to the motion to set aside summary judgment. (CT 71)

On April 17, 2014 the Surety filed a supplemental request for judicial notice of the transcript dated November 29, 2012 which showed that the defendant had not been ordered to personally appear in court on January 3, 2013 for the pre-trial hearing. (CT 99)

On April 25, 2014 the court continued the motion to set aside summary judgment to May 16, 2014 based on a stipulation of the parties. (CT 111)

On May 13, 2014 the surety filed a reply brief in response to the opposition. (CT 116)

On May 16, 2014 the motion to set aside summary judgment was heard. The Honorable Judge Lia Martin properly granted the motion to set aside summary judgment. (CT 121)

On May 21, 2014 a notice of entry of order was mailed to the parties. (CT 123)

On July 9, 2014 the County filed a notice of appeal. (CT 127)
The Court of Appeal filed an opinion affirming the ruling of the trial court. The Court granted Appellant's Petition for Review on January 13, 2016.

INTRODUCTION

Penal Code section 1269b provides an important function by providing a defendant, when being released from custody, notice of a time and place to appear in court. Penal Code section 1269b does not separately require a defendant to appear under Penal Code section 1305(a) subdivision (4). Penal Code section 1269b

incorporates, but does not enlarge Penal Code section 1305(a)'s provisions relating to the requirement that the defendant be lawfully required to appear in court prior to forfeiting bail.

In the vast majority of cases the defendant's presence in court is lawfully required at the hearing set by the jailor. Generally speaking defendants are released on bail soon after their arrest and the first appearance is for arraignment. This appearance is lawfully required by Penal Code section 1305(a) subdivision (1).

If a defendant has previously failed to appear and a bench warrant has issued, his presence is lawfully required by the terms of the bench warrant and Penal Code section 978.5.

Nevertheless, the legislature has wisely not required the defendant to appear in court for purposes of forfeiting bail at those hearings excluded by, or not covered by Penal Code section 1305. Penal Code section 1269b subdivision (h) only requires the defendant to appear personally at those hearings covered by Penal Code section 1305 subdivision (a). "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 Section 1269b subdivision (h)). Therefore, Penal Code section 1269b does not require a defendant's

presence in court when the hearing set by the jailer is excluded by Penal Code section 1305, or when that date either conflicts with or is superseded by a court order.

Prior versions of Penal Code section 1269b specified that the court should forfeit bail if the defendant failed to appear on the date set by the jailor. The legislature has since amended the statute to only require the forfeiture of bail when required by Penal Code section 1305.

Case law has recognized at least two circumstances where a defendant's presence is not lawfully required at the date set by the jailer on the bond. Penal Code section 1305(a) specifies that the court does not have jurisdiction to forfeit a bond where a complaint has not been filed on or before that appearance date. The defendant's presence in court on the day set by the jail also is not required if it either conflicts with or is superseded by an order of the court.

Finding that the defendant's presence in court on the day set by the jailer is always lawfully required by the provisions of Penal Code section 1305(a) subdivision (4) would result in absurd forfeitures where that date is in conflict with the terms of Penal Code section 1305 or a court order. The plain language of Penal

Code section 1269b subdivision (h) clarifies that Penal Code section 1269b is limited by Penal Code section 1305 and does not itself provide a separate basis to lawfully require a defendant's presence in court.

This interpretation of the provisions of Penal Code section 1269b also allows the legislature to modify the requirements for a defendant to be lawfully required appear in court by amending the provisions of Penal Code section 1305 without having to separately modify the language in Penal Code section 1269b.

ARGUMENT

a. The Defendant's Presence In Court Is Not Lawfully Required For Purposes Of Forfeiting Bail Where No Complaint Has Been Filed

Penal Code section 1305(a) contains the following limitation on the trial court's authority to forfeit bail:

“However, 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”

The court in *People v. Ranger Ins. Co.* (2006) 145 Cal.App.4th 23 found that a trial court was without jurisdiction to forfeit bail at a hearing set by the jailer pursuant to Penal Code section 1269b

because no complaint had been filed by that date. This conclusion was based on the 1987 amendment to Penal Code section 1305 that limited the court's jurisdiction to forfeit bail prior to the filing of a complaint. The *Ranger* court relied on the legislative history of this amendment which demonstrated that a defendant's presence was not required when no complaint had been filed.

According to the bill's author (Senator Robbins), "[w]hen no charges are filed there is no necessity to have the defendant appear in court. This bill would permit bail to be returned without appearance before the court, and save the court time." (Assembly Com. on Public Safety, Rep. on Sen. Bill No. 316, as introduced (1987-1988 Reg. Sess.) Aug. 18, 1987.)

(*People v. Ranger Ins. Co.* (2006) 145 Cal.App.4th 23, 29).

In *County of Los Angeles v. Fairmont* (2008) 164 Cal.App.4th 1018 the court held that the trial court could not forfeit bail at the date set by the jailor on the bond pursuant to Penal Code section 1269b, because Penal Code section 1305 subdivision (a) required a complaint to be filed prior to the forfeiture of bail.

"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 be neither exonerated nor forfeited on that date. It cannot be exonerated yet because the People are given 15 days by statute to file the complaint. (citation.) It cannot be forfeited because, if no complaint is filed within 15 days—as was the case in *Ranger*—and the court does not continue the case or otherwise order the defendant to return on a later date, the court has no jurisdiction to declare a forfeiture on the bond. (*Ibid.*)”

(*County of Los Angeles v. Fairmont* (2008) 164 Cal.App.4th 1018, 1025)

In *People v. American Surety Ins. Co.* (2009) 178 Cal.App.4th 1437 the court found that the trial court is without jurisdiction to declare a forfeiture of bail at the date set by the jailor when no complaint was filed prior to the appearance date. Neither does it have jurisdiction to forfeit bail at a continued hearing where there was no court order setting an arraignment date even though the prosecutor had mailed a letter to the defendant. (*Id.*, at 1440).

As in *County of Los Angeles v. Fairmont, Supra*, 164 Cal.App.4th 1018 and *People v. American Surety Ins. Co., Supra*, 178 Cal.App.4th 1437, this appearance date was not at a hearing covered by Penal Code section 1305 subdivision (a). Penal Code section 1269b does not create a separate duty for a defendant to personally appear in court. Penal Code section 1269b subdivision

(h) merely refers back to Penal code section 1305 to determine when it is lawful to declare a forfeiture of bail.

Therefore, courts have consistently recognized that the provisions of Penal Code section 1269b are limited by the provisions of Penal Code section 1305. By including subsection (h) in Penal Code section 1269b, the legislature made it clear that Penal Code section 1269b is subject to the provisions of Penal Code section 1305, and the legislature is free to modify Penal Code section 1305 without the necessity of further amending Penal Code section 1269b.

b. Penal Code section 1269b Does Not Require the Defendant's Presence at Hearings That Are In Conflict With or Superseded By a Court Order

In *People v. National Automobile and Casualty Insurance Company* (1977) 77 Cal.App.3d Supp. 7 the court file reflected that the defendant was ordered to appear in court on December 3, 1975. Nevertheless, the appearance date set on the bond was December 1, 1975. While not specifically addressing the provisions of Penal Code section 1269b, the *National Automobile* court found that when in conflict with the date set on the bond, the court order controlled.

It is manifest that a court order establishes the date upon which a defendant is to be arraigned, tried or adjudged. Under the rule of ejusdem generis, general words following specific terms are limited in meaning to things analogous to the specific terms. (*People v. Collins* (1969) 273 Cal.App.2d 1, 4, 77 Cal.Rptr. 741.) We hold, accordingly, there being no other authority on the subject of which we are aware, that the court did not lose jurisdiction by failing to declare a forfeiture of the bail bond when defendant failed to appear in court on the date agreed upon by defendant and the bonding company.

(*Id.*, at p. 9)

Similarly, in *People v. American Contractors Indemnity Co.* (2001) 91 Cal.App.4th 799, the defendant was released on bail after conviction and prior to sentencing. Upon discovering that the defendant had been released on bail, the District Attorney filed a motion to revoke bail. This motion was scheduled nearly a month before the defendant was ordered to appear pursuant to the terms of the bond. The trial court revoked bail and ordered a forfeiture of bail at this hearing. Both the trial court and the court of appeals agreed that this order of forfeiture was void because the defendant had not been given notice to appear. However, had the defendant appeared in court for the motion to revoke bail the trial court

would not be bound by the date set by the jailor, but would have been free to set the next court hearing without reference to the date ordered pursuant to Penal Code section 1269b. Therefore, the court order would have superseded the date set by the jail because no hearing would have been scheduled for the date set pursuant to Penal Code section 1269b.

In addition, where a defendant is arrested on separate charges prior to the date set by the jail pursuant to Penal Code section 1269b, the trial court should not be subject to the control of the jailer who set the initial appearance date. The trial court should be free to set appearances for the defendant within its discretion without reference to the prior date set by the jailer.

It is important that trial courts have the ability to control the processes of the court. Penal Code section 1269b will generally require a defendant to appear on the date set by the jailor, but if that date is either in conflict with or superseded by a court order, the court order should prevail and the trial court should not be bound by a conflicting or superseding date set by the jailer.

c. The Legislative History Confirms That Penal Code section 1269b is Limited By the Provisions of Penal Code section 1305.

The People acknowledge that prior versions of Penal Code section 1269b specifically provided for the court to forfeit bail if the defendant failed to appear that the date set by the jailer. (OBM p. 8) This language was replaced Penal Code section 1269b subdivision (h) which provides that the provisions of Penal Code sections 1305 and 1306 control the court's actions when a defendant fails to appear on the date set by the jailer. The plain language of these amendments demonstrates that the legislature intended the power of the court to forfeit bail to be limited by Penal Code section 1305, and not controlled necessarily by the day set by the release of the defendant by the jailer under Penal Code section 1269b.

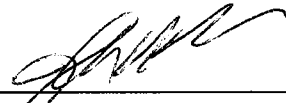
CONCLUSION

Based on the foregoing, in the present case Penal Code section 1269b did not independently require the defendant's presence in court. And the Court of Appeals did no err in concluding that the defendant's presence was not lawfully required under the provisions of Penal Code section 1269b.

Therefore, this Court should affirm the ruling of the Court

of Appeals in this case.

Dated: April 18, 2016



John M. Rorabaugh,
Attorney for Respondent

CERTIFICATE OF COMPLIANCE

This brief is set using **13-pt Century Schoolbook**.

According to Microsoft Word, the computer program used to prepare this brief, this brief contains **3,115** words, excluding the cover, tables, signature block, and this certificate.

The undersigned certifies that this brief complies with the form requirements set by rule 8.204(b) and contains fewer words than permitted by rule 8.204(c), rule 8.360(b), or by Order of this Court.

Dated: April 18, 2016

Law Office of John Rorabaugh

By: 

John M. Rorabaugh

For Respondent

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

No. 230213

PROOF OF SERVICE

I, Crystal Rorabaugh hereby declare:

At the time of service I was at least 18 years of age and not a party to this legal action. My business address is 801 Parkcenter Dr Ste 205, Santa Ana, CA 92705. I served document(s) described as ANSWER BRIEF ON THE MERITS as follows:

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On April 18, 2016, I enclosed a copy of the document(s) identified above in an envelope and deposited the sealed envelope(s) with the US Postal Service with the postage fully prepaid, addressed as follows:

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c/o Honorable Kerry Bensinger
Honorable Lia Martin, Judge Superior Court
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I am a resident of or employed in the county where the mailing occurred (Santa Ana, CA).

By electronic service

On April 18, 2016, I served by email (from baillaw@usa.net), and no error was reported, a copy of the document(s) identified above as follows:

Terry Cressy TCressy@fcsurety.com
(for Financial Casualty & Surety, Inc)

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

Dated: April 18, 2016

By:


Crystal Korabaugh