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(LASC No. SJ3898)

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SUPREME COURT
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IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

FILED WITH PERMISSION

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)

PETITION FOR REVIEW

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INTRODUCTION

On November 29, 2012, a felony defendant was present, in custody, for arraignment when her pretrial conference was set for January 3, 2013. At the conclusion of the hearing, the court stated, "So that will be the order, then. We'll see you all back here on January 3rd." The defendant, who had not executed a §977, subd.(b) waiver, was remanded to custody. Prior to January 3, the defendant was released on bail. In accordance with Penal Code¹ §1269b, subd.(a), the jailer approved and accepted bail, and upon the defendant's release from custody, set the defendant's next court appearance for January 3, 2013.

The defendant failed to appear on January 3rd, without sufficient excuse, and bail was forfeited.

The first question is whether the authority granted to a jailer in §1269b, subd.(a) "to set the time and place for the appearance of the arrested person before the appropriate court and give notice thereof," made the defendant's appearance in court lawfully required on January 3, 2013. The answer must be "yes."

The next question is whether the court's statement, "So that will be the order, then. We'll see you all back here on January 3rd," was an order for the defendant to return. The answer again is "yes."

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

The final question is whether §977, subd.(b)'s mandate, that felony defendants who have not executed a waiver be personally present at all proceedings, lawfully required the defendant to appear at the next scheduled hearing. Once again, the answer is "yes."

QUESTIONS PRESENTED FOR REVIEW

1. Penal Code §1269b, subd. (a) authorizes a jailer to approve and accept bail "and to set the time and place for the appearance of the arrested person before the appropriate court and give notice thereof." "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." (§1269b, subd. (h).) Section 1305, subd. (a)(4) requires a court to forfeit bail if, without sufficient excuse, a defendant fails to appear when "the defendant's presence in court is lawfully required."

Is a defendant lawfully required to appear on the date set by the jailor pursuant to §1269b, such that a failure to appear should result in bail forfeiture under §1305(a)(4)?

2. At the conclusion of a criminal proceeding at which the defendant and her counsel were present, and after setting the next hearing on January 3, 2013, the court stated, "So that will be the order, then. We'll see you all back here on January 3rd." Was the court's statement an order for the defendant to appear at the next court date?

3. Section 977, subd. (b) requires a defendant charged with a felony to be personally present at certain specified hearings and at all other proceedings unless the defendant has executed a waiver. Section 1305, subd.(a)(4) requires a court to forfeit bail if, without sufficient excuse, a defendant fails to appear when "the defendant's presence in court is lawfully required."

Is a felony defendant lawfully required to appear at the next scheduled court proceeding pursuant to §977(b), such bail should be forfeited under §1305(a)(4) if the defendant fails to appear?

GROUNDS FOR REVIEW

California Rules of Court, rule 8.500 subd.(b)(1) states that the Supreme Court may order review of a Court of Appeal decision "[w]hen necessary to secure uniformity of decision or to settle an important question of law." (CRC, rule 8.500(b)(1).) Here, review is necessary for both reasons.

Whether bail forfeiture is appropriate when a defendant fails to appear as required by §1269b is an important question of law. Section 1305, subd.(a) requires a court to forfeit bail upon a defendant's first unexcused non-appearance. Section 1269b, subd.(a) grants jailors the authority to approve and accept bail, to issue and sign an order for the release of the defendant, and to "set the time and place for the appearance of the arrested person." Section 1269b, subd.(h) then provides that "[i]f a

defendant . . . 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.”

The opinion in this case (“the Opinion”) holds that the authority granted under §1269b, subd.(a) is insufficient to “lawfully require” a defendant’s appearance. In so holding, the Opinion ignores the plain language and legislative history of both §§1269b and 1305. The Opinion states “[Section 1269b] does not address forfeiture of bail, which undisputedly is governed by section 1305.” (Opinion, page 7.) But subdivision (h) of §1269b explicitly cites §1305 as a consequence for the defendant’s failure to appear as ordered under subdivision (a). The Opinion’s holding renders §1269b, subd.(h) void, and it ignores principles of statutory construction as well as the statute’s legislative intent.

Further, the Opinion creates an unworkable system by “[r]equiring the court to order the defendant to appear at a hearing” in order for the defendant’s appearance to be lawfully required. (See Opinion, page 8.) The appellate court failed to consider situations when a defendant bails out of custody without the trial court having had the chance to order the defendant’s return. Thus, the Opinion cannot stand and review is necessary.

Review is also appropriate to ensure uniformity of decision. The Opinion not only represents a departure from existing authority, but it supports its holding by misinterpreting case law. (Opinion, pages 6-8.)

The cases cited, *People v. American Surety* (“*American Surety*”) (2009) 178 Cal.App.4th 1437 and *People v. Ranger Insurance Company* (“*Ranger*”) (2006) 145 Cal.App.4th 23, support the position that bail must be forfeited when a defendant fails to appear on the date set by the jailor as reflected on the bond. However, the Opinion interprets their holdings to stand for the opposite – that §1269b is inapplicable to bail forfeiture. Thus, review is required.

Also, whether §977, subd.(b) applies to bail forfeiture proceedings is currently pending before this Court. (*People v. Safety National Casualty Ins. Co.* (“*Safety National*”) (2014) 225 Cal.App.4th 438, review granted July 23, 2014, S218712; *People v. American Contractors Indemnity Co.* (2014) 226 Cal.App.4th 1059, review granted August 13, 2014, S219842; and *People v. Lexington National Insurance Corporation* (unpublished opinion filed January 21, 2015) review granted April 29, 2015, S224774) In granting review, the Court deferred action in the latter two cases pending consideration and disposition of *Safety National* because the issues are related (See CRC, rule 8.512, subd. (d)(2).) One of the issues here is also related, and review is appropriate.²

² While the appellate court did not analyze the applicability of §977, subd.(b) because the court claimed that the County abandoned the issue on appeal, review is appropriate. The County did not abandon the argument; rather, it argued it was not necessary to address the unsettled §977, subd.(b) issue because §1269b was dispositive. But the facts here

Whether §1269b and §977, subd.(b) are relevant to bail forfeiture present important questions of law. The statutes governing bail forfeiture do not address “non-essential” or “non-mandatory” hearings; the statutes require a court to forfeit bail at a defendant’s first unexcused non-appearance or the court loses jurisdiction to do so later. (*Ranger, supra*, 48 Cal.App.4th at 995 [citing *People v. United Bond Insurance Co.* (1971) 5 Cal.3d 898, 907].) But if a court forfeits bail when a defendant’s appearance was not lawfully required, the forfeiture is void and cannot stand. (*People v. International Fidelity Ins. Co.* (“*International Fidelity*”) (2012) 212 Cal.App.4th 1556, 1561-64.)

In order for the bail forfeiture process to work as the Legislature intended, the law must clearly and unambiguously define when a defendant’s appearance is “lawfully required.”

PETITION FOR REHEARING

The County filed a Petition for Rehearing on October 1, 2015, which the Court of Appeal denied without comment on October 7, 2015. A copy of the Court of Appeal's order denying the County's Petition for Rehearing is attached hereto as Exhibit 2.

(...continued)

plainly raise the issue of whether the defendant’s presence was “lawfully required” pursuant to §977.

STATEMENT OF THE CASE

On November 15, 2012, the People of the State of California filed a felony complaint against Sandra Chavezgarcia ("Chavezgarcia"). (Clerk's Transcript ("CT") 82.) On November 29, 2012, Chavezgarcia appeared in court, in custody, for arraignment. (CT 82-83.) The next court date was set for a pretrial conference on January 3, 2013. (CT 102.) At the end of the hearing, the court stated, "So that will be the order, then. We'll see you all back here on January 3rd." (CT 102.) Chavezgarcia was remanded to custody. (CT 83.)

On December 29, 2013, the surety, Financial Casualty & Surety, Inc. ("the surety" or "Financial"), through its agent Bail Now Bail Bonds, posted a bail bond to secure Chavezgarcia's release from custody. (CT 4.) Pursuant to 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 the entry of summary judgment. (CT 5.)

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

The appearance period³ was extended twice and ultimately expired without the forfeiture having been set aside. (CT 83-85.) The court entered summary judgment on the forfeited bond and sent notice. (CT 22.)

On February 20, 2014, the surety filed a motion to set aside summary judgment, discharge forfeiture, and exonerate the bond (the "Motion"), on the basis that Chavezgarcia's appearance was not "lawfully required" on January 3, 2013. (CT 32-68 and 86.) The County opposed the motion and argued that Chavezgarcia's appearance was "lawfully required." (CT 71-80.) On May 16, 2014, the court granted the Motion. (CT 124.)

The County timely appealed the trial court's order granting the Motion. (CT 127.) The County contended that Chavezgarcia's appearance was "lawfully required" pursuant to both §§977, subd. (b) and §1269b, and that she had been ordered to return. (Appellant's Reply Brief, pages 5 and 10; Appellant's Opening Brief, page 6.) Following oral argument, the Court of Appeal filed the Opinion affirming the lower court's order. (Exhibit 1.) On October 1, 2015, the County filed its petition for rehearing which was denied without comment on October 7, 2015. (Exhibit 2.)

³ "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." (§1305, subd. (b).)" (*People v. American Contractors Indemnity Co.* (2004) 33 Cal.4th 653, 658.)

ARGUMENT

A. A DEFENDANT IS LAWFULLY REQUIRED TO APPEAR ON THE DATE SHOWN ON THE BOND PURSUANT TO PENAL CODE §1269b

1. The plain language and legislative history

The Opinion's holding that §1269b is irrelevant in determining whether a defendant's presence is "lawfully required" under §1305 disregards the plain language of §1269b. (§1269b, subds.(a) and (h); see Opinion, page 5.) Section 1269b provides in pertinent part:

(a) The officer in charge of a jail in which an arrested person is held in custody...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 to give notice thereof.

...

(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.

(§1269b, subds.(a) and (h).) And as the Opinion correctly states, bail forfeiture "undisputedly is governed" by §1305. (Opinion, page 7.)

Under Section 1305, subd.(a):

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), emphasis added.) Section 1306 then governs entry of summary judgment on bail bonds.

The plain language of §1269b is clear and unambiguous: A jailer has the authority to approve and accept bail, to issue and sign an order for the release of an arrested person, and to set the time and place for the appearance of the arrested person. If the arrested person fails to appear at the time and place set by the jailer, without sufficient excuse, bail shall be forfeited.

In addition to the plain language, a historical review of the statute supports the County's position and reveals the Legislature's original intent behind the statute: 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 serve as a mechanism for 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, it serves the same purpose today.

The reference to §§1305 and 1306 in §1269b, subd.(h) imposes the penalty of forfeiture if the defendant fails to appear at the hearing ordered by the jailer. In 1959, a number of provisions were added, and among them was the following: "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.

Further, the language of §978.5, a statute dictating when a bench warrant may be issued for a defendant's failure to appear, confirms that persons identified in §1269b have the authority to make a defendant's appearance lawfully required. Section 978.5, subd. (a) states:

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:

(1) If the defendant is ordered by a judge or magistrate to personally appear in court at a specified time and place.

(2) *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), emphasis added.) There seems to be no doubt that a defendant's appearance is lawfully required for the purposes of issuing a bench warrant if she fails to appear when so ordered by a person authorized to accept bail. Likewise, there should be no doubt that a defendant's appearance is lawfully required for purposes of forfeiting bail if she fails to appear when so ordered by a person authorized to accept bail.

2. The Opinion creates a conflict within the case law.

Prior to the Opinion, case law consistently held that a defendant's presence was lawfully required under §1269b.⁴ The contrary holding of the

⁴ Although *People v. National Automobile Insurance Company* (1977) 77 Cal.App.3d Supp.7, found that the defendant was not required to

Opinion and its misinterpretations of the cases it cites creates a conflict of authority on an important question of law.

"In reliance on" *American Surety, supra*, 178 Cal.App.4th 1437 and *Ranger, supra*, 145 Cal.App.4th 23, the Court of Appeal concluded 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." (Opinion, page 6.) The appellate court analogizes *American Surety* and *Ranger* to the facts here because those cases found that letters notifying a defendant to appear in court mailed by the district attorney and the police department, respectively, were insufficient to compel a defendant's appearance for bail forfeiture purposes. (Opinion, pages 6-7.) However, the Opinion fails to distinguish situations where a person or entity *not* authorized to set the time and place for the defendant's appearance under §1269b (*e.g.*, the district attorney), from the situation here where Chavezgarcia's presence on January 3, 2013, was set and noticed by the jailer, who *is* authorized to do so by statute.

(...continued)

appear in court on the date reflected on the bail bond, it does not appear that the appellate court was presented with, and the opinion does not address, the issue of whether the defendant had a duty to appear pursuant to §1269b. (*Id.* at p. 9.) "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.)

In *Ranger*, the issue was whether the bond was exonerated by operation of law when no complaint was filed within 15 days of the original arraignment date. (*Ranger, supra*, 145 Cal.App.4th at 26.) The People argued the 15 days began to run from the actual date of arraignment – not from the original arraignment date. (*Id* at 28.) The *Ranger* Court agreed with the surety. But the *Ranger* decision does not – as the Opinion contends – support the conclusion that the bond is meaningless in terms of a defendant being required to appear.

"Ranger Insurance Company posted a \$20,000 bail bond for [the defenant]'s release, and [the defendant] was *ordered by the jailor* and notified by the bond to appear in court." (*Id.* at 25, emphasis added.) Before the date shown on the bond, the defendant received a letter from the police department telling her the arraignment date had been changed (because no complaint had been filed), so she should not appear on the date on the bond but on a different date. Before that new date, the defendant received another letter from the police department again telling her the arraignment date had been continued (because no complaint had been filed), and to appear on a different date. The defendant appeared for arraignment on the date stated in the second letter, but failed to appear as ordered on the next date. The court forfeited bail when the defendant failed to appear for the preliminary hearing. (*Ibid.*)

As stated above, the surety argued that the court lost jurisdiction over the bond because no complaint was filed within 15 days of the date set by the jailor – the original arraignment date. The *Ranger* Court analyzed the 15-day provision of §1305 and determined the original arraignment date was the date that mattered. (*Id.* at 30.) In fact, the court stated:

[The defendant] was *ordered by the jailor to appear on January 22, and thus was lawfully required to appear* for arraignment on the date. (§ 1269b, subds.(a), (h).

(*Ranger, supra*, 145 Cal.App.4th at 30, emphasis added.) Contrary to the Opinion's conclusion, *Ranger* does not support the position that a defendant need not appear on the date shown on the bail bond. *Ranger* supports the County's position that a bail bond, under the authority of §1269b, lawfully requires a defendant to appear.

The Opinion states, "Similar to the prosecutor's letter in *American Surety* and the police department letter notifying the accused of her arraignment in *Ranger*, a bail bond form with the date of the hearing filled in simply is not a court order." (Opinion, page 7.) Yet, the *Ranger* Court did not rely on a court order to compel the defendant's appearance. Instead, it held that the defendant's appearance was lawfully required because she was ordered to appear by the jailor. (*Ranger, supra*, 145 Cal.App.4th at 30.) Here Chavezgarcia was ordered to appear by the jailor on January 3, 2013. The distinguishing fact, which resulted in the exoneration of the

bond in *Ranger*, is that in *Ranger* the complaint was not filed within 15 days from the date of the arraignment. (*Ibid.*) But the filing of the complaint is a non-issue here. Thus, *Ranger* supports the County's argument because *Ranger* takes for granted that if a complaint had been filed prior to the date shown on the bond, the defendant's appearance would have been required under §1305, subd.(a)(4).

American Surety, supra, 178 Cal.App.4th 1437, also supports the County's position. *American Surety's* facts are similar to *Ranger's* in that the original arraignment date was purportedly continued by an informal, out-of-court process – a letter – not from the police department as in *Ranger*, but from the prosecutor's office. (*Id.* at 1439.) And as in *Ranger*, the surety in *American Surety* argued that the defendant was required to appear on the date set by the jailor when the defendant was released on bond. The surety argued:

[T]he trial court lost jurisdiction to forfeit bail when the case was not called on the date set for arraignment by the jailer, and there was no jurisdiction on a later arraignment date set by the district attorney.

(*Id.* at 1438.) The appellate court agreed, concluding that there "was no court order continuing the appearance date set by the jailor, and the district attorney's notice to appear was not a substitute." (*Id.* at 1440.)

As in *Ranger*, the *American Surety* decision is premised on the assumption that the jailer has authority to lawfully require a defendant's

appearance. (*American Surety, supra*, 178 Cal.App.4th at 1339.) However, the *American Surety* Court found that the defendant's appearance was not lawfully required at the continued arraignment hearing, and that the 15-day limitation was calculated from the original arraignment date, based on its facts: (1) no complaint was filed by the original appearance date set by the jailer; (2) no hearing took place on the original appearance date; and (3) bail was forfeited at the continued hearing date, which had not been continued by a court order but rather by an arraignment letter (and there was no evidence that the letter was sent or received by the defendant). (*Id.* at 1439-1440.) By contrast, here, (1) the complaint was filed before the date set by the jailer, (2) a court hearing did take place on the date set by the jailer; and (3) the court forfeited bail on the original appearance date set pursuant to §1269b. Thus, *American Surety* does not support the Opinion's holding.

County of Los Angeles v. Fairmont Specialty Group ("Fairmont") (2008) 164 Cal.App.4th 1018, also supports the County's position because just as *Ranger* and *American Surety*, its reasoning rests upon the assumption that §1269b compels a defendant's appearance for bail forfeiture purposes.

In *Fairmont*, defendant Vasquez did not appear on March 3, 2006, the date reflected on the bond. (*Id.* at 1021.) There is no record of any hearing taking place on that date. (*Ibid.*) Also, no complaint had been filed

as of that date. (*Ibid.*) On March 7, 2006, a complaint was filed, and arraignment was set for March 21, 2006. (*Ibid.*) Vasquez appeared on March 21, 2006, and at several hearings thereafter until he failed to appear for sentencing on August 24, 2006, when bail was forfeited. (*Id.* at 1021-1022.) In seeking to set aside the forfeiture, the surety argued that the court lacked jurisdiction over the bond on August 24, because pursuant to §1269b, Vasquez was required to be present on March 3, the date on the bond. (*Id.* at 1024.)

The Court of Appeal 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 in the event of the defendant's nonappearance, the statutes governing bail forfeiture and entry of summary judgment against a bondsman apply. (*Id.* at 1024; see §§1305 and 1306.) Yet, it pointed out that §1305, subd.(a) also 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.) It further explained that the 15-day provision was added in 1987 to eliminate the need for the defendant to appear in court on the first date specified following the posting of the bail if no charges had yet been filed. (*Ibid.*) It went on to hold that, "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. The *Fairmont* holding does not divest jailers of the authority to order and notice an appearance date at which bail will be forfeited if the defendant fails to appear. Rather, *Fairmont* discusses an exception to this general rule based on circumstances not present here.

3. The Opinion creates an impractical and unworkable criminal system

This Petition presents an important question of law because the Opinion's holding (that a defendant is not lawfully required to appear on the date set by the jailor pursuant to §1269b, subd.(a) and reflected on the bail bond), is that some defendants will be lost to the courts forever. The Opinion fails to address the situation where a defendant is arrested and released on bail before appearing in court, and where the next court hearing is one at which the defendant's appearance is not otherwise required.

Consider a scenario where a defendant is released on his own recognizance and, after making several appearances, fails to appear at trial. The court issues a bench warrant and sets bail. Thereafter, the defendant is arrested on the bench warrant and posts bail before appearing in court. Upon his release, the jailer sets the time and place for the defendant's next