

COUNTY OF LOS ANGELES v. FINANCIAL CAS. & SUR.

S230213

Supreme Court of California

October 26, 2015

Reporter

2015 CA S. Ct. Briefs LEXIS 2581

COUNTY OF LOS ANGELES, Plaintiff-Appellant, v. FINANCIAL CASUALTY & SURETY, INC., Defendant-Respondent.

Type: Petition for Appeal

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

Counsel

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Title

Petition for Review

Text

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 Code ¹ § 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.

[*2]

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."

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."

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

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 [*3] 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." [*4]

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 [*5] 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 [*6] 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 [*7] 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

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 [*8] 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.

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 [*9] 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.)

[*10]

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

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 plainly raise the issue of whether the defendant's presence was lawfully required" pursuant to § 977.

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.)

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.)

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 [*11] 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 [*12] *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 [*13] absence of a judge of said court, have authority to accept bail for the appearance before said court... [P] 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 [*14] 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 [*15] 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 Opinion and its misinterpretations of the cases it cites creates a conflict of authority on an important question of law.

[*16]

"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,

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

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.

In *Ranger*, the issue was whether the bond was exonerated by operation of law when no complaint [*17] 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 [*18] 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 [*19] *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 jailer. (*Ranger, supra, 145 Cal.App.4th at 30.*) Here Chavezgarcia was ordered to appear by the jailer 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* [*20] 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 [*21] 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. [*22]

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;* [*23] 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 [*24] 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 appearance for a bench warrant hearing. In this situation, a bench warrant hearing is not a hearing specifically identified

in § 1305, subd.(a). There was no opportunity for the court to order [*25] the defendant to appear.⁵ If the date on the bond is ineffective to “lawfully require” the defendant’s appearance, how does the court get him back to stand trial?

Or, consider a defendant who remains in custody for several months, and who is convicted and given probation (and obviously released from custody). The court sets a date for the defendant to provide proof of compliance with the conditions of his probation, but he fails to appear. The court issues a bench warrant and sets bail. The defendant is picked up on the bench warrant and posts bail, so the warrant is recalled, and the court sets a new hearing. If the date shown on the bond is not sufficient to “lawfully require” the defendant’s appearance at that new hearing, how does the court get the defendant back to ensure [*26] compliance with probation?

As these hypotheticals illustrate, the bail bond must be sufficient to lawfully require a defendant to appear in court. If not, courts will lose their ability to compel a defendant’s appearance in court, which is the main purpose of bail.

B. A DEFENDANT MAY BE LAWFULLY REQUIRED TO APPEAR IN COURT WITHOUT THE COURT HAVING USED CERTAIN “MAGIC WORDS” ORDERING THE DEFENDANT TO RETURN

So that will be the order, then. We’ll see you all back here on January 3rd.

(CT 102.) By this language, the trial court ordered Chavezgarcia to appear at the January 3, 2013 hearing. The Court explicitly mentions “the order” in the first sentence, followed by “[w]e’ll see you all back here on January 3rd.” The use of the words “you all” signifies that the trial court was referring to everyone present at this hearing, including the defendant. It is undisputed that Chavezgarcia was present in court for the November 29, 2012 hearing. (CT 101.) The close proximity of these two sentences demonstrates that the trial court ordered Chavezgarcia to appear at the January 3, 2013 pre-trial conference.

“Magic words” are not necessary when a trial court has otherwise [*27] made its intent clear. (*In re Romeo C. (1995) 33 Cal.App.4th 1838* [finding it sufficient that the record manifested the trial court’s exercise of discretion in balancing the probative value of evidence against its prejudicial effect]; *People v. Maxwell (1981) 115 Cal.App.3d 807* [finding the trial court did not have to utter magic words in determining a defendant’s mental competency].) Similarly, there are no “magic words” that must be used in order to require a defendant to return to court. Here, Chavezgarcia was present when the court stated the date for the pre-trial conference and said “that will be the order.” Chavezgarcia was ordered to return to court for January 3, 2013.

C. A DEFENDANT CHARGED WITH A FELONY WHO HAS NOT EXECUTED A WAIVER IS LAWFULLY REQUIRED TO APPEAR PURSUANT TO PENAL CODE § 977

1. Rules of statutory construction dictate that § 977 applies to bail forfeiture proceedings under § 1305

The guiding principles behind bail forfeiture are settled. “The law traditionally disfavors forfeitures and this disfavor extends to the forfeiture of bail.” (*People v. Indiana Lumbermens Mutual Ins. Co. (2010) 49 Cal.4th 301, 307* [*28] [citing *United Bonding, supra 5 Cal.3d at p. 906*].) Section 1305, therefore, must be strictly construed in favor of the surety to avoid the harsh results of a forfeiture. (*County of Los Angeles v. Ranger Ins. Co. (1999) 70 Cal.App.4th 10, 16.*) However, “[t]he policy disfavoring forfeiture cannot overcome the plainly intended meaning of the statute.” (*People v. Indiana Lumbermens Mutual Ins. Co., supra, 49 Cal.4th at 308.*)

The fundamental purpose of statutory construction is to ascertain the intent of the lawmakers so as to effectuate the purpose of the law. (*In re Marriage of Harris (2004) 34 Cal.4th 210, 221.*) “We begin by examining the statutory language, giving the words their usual and ordinary meaning. If there is no ambiguity, then we presume the lawmakers meant what they said, and the plain meaning of the language governs.” (*Day v. City of Fontana (2001) 25 Cal.4th 268, 272*, internal citations omitted.) Further, an “interpretation which gives effect is preferred to one that makes void.” (*Civil Code § 3541.*) And “[t]o

⁵ Unless it is acceptable to deny bail until the defendant has been brought to court in custody (so he can be ordered back), or to always issue no-bail bench warrants, the date on the bail bond must compel the defendant’s appearance.

the extent that uncertainty remains in interpreting statutory language, [*29] consideration should be given to the consequences that will flow from a particular interpretation. Accordingly, [the court should] not parse each literal phrase of a statute if doing so contravenes the obvious underlying intent, or leads to absurd or anomalous results." (*People v. Adames* (1997) 54 Cal.App.4th 198, 212, internal citations omitted.)

The issue here is whether the mandatory appearance requirements of § 977, subd.(b) are applicable to bail forfeiture provisions under § 1305, subd.(a). Under § 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.) Thus, if the defendant's presence is lawfully required, the court must forfeit bail for the defendant's unexcused absence at the hearing.

Under § 977, subd.(b)(1), in all cases in which a felony is charged, [*30] the accused shall be present at arraignment, at the time of plea, during the preliminary hearing, during those portions of the trial when evidence is taken before the trier of fact, and at the time of sentencing. Further, "[t]he accused *shall be personally present at all other proceedings* unless he or she shall, with leave of court, execute in open court, a written waiver of his or her right to be personally present." (§ 977, subd.(b)(1), emphasis added.) The plain wording of this statute compels a defendant charged with a felony to be present at arraignment, time of plea, during the preliminary hearing, during trial where evidence is presented, and sentencing. (*Ibid.*) And, unless the defendant has signed a written waiver, the defendant must appear "at all other proceedings." (*Ibid.*)

2. Case law supports § 977's relevance to bail forfeiture proceedings

A lineage of case law supports the position that § 977 is relevant to bail forfeiture. In *International Fidelity, supra*, 212 Cal.App.4th 1556, the appellate court discussed the relationship between whether a defendant's appearance is required under § 977, and whether a defendant's appearance [*31] is "lawfully required" for bail forfeiture purposes. (See, §§ 977 and 1305.) In *International Fidelity*, the surety posted two bonds to secure the release of defendant Contreras in two misdemeanor cases. (*Id. at 1558-59.*) When Contreras's defense counsel appeared and informed the court he had lost contact with his client, the court forfeited bail. (*Ibid.*) The surety then filed motions to vacate the forfeitures which were denied. (*Id. at 1559-60.*) The *International Fidelity* Court reversed, holding that absent a factual showing that Contreras terminated counsel's authority to represent him, § 977 allowed his attorney to appear and excused the defendant's nonappearance. (*Id. at 1561.*)

The *International Fidelity* Court began its analysis by stating, "The bail statutes at issue in this case are *Penal Code sections 977 and 1305.*" (*Id. at 1561.*) It goes on to explain that because § 977, subd.(a) allows a defendant to appear through his attorney, Contreras was not "lawfully required" to personally appear at the hearings at which bail was forfeited because counsel appeared on his behalf. (*Id. at 1561-63.*) [*32] Thus, the *International Fidelity* Court found a direct correlation between whether a defendant's appearance was required under § 977, and when a court must forfeit bail under § 1305.

In support of its holding, *International Fidelity* cites *People v. American Bankers Ins. Co.*, which held that "[s]ince the defendant may appear through counsel under section 977, subd. (a), he or she will have sufficient excuse for not appearing [under *Penal Code § 1305*] so long as counsel appears and is authorized to proceed in the defendant's absence." (*International Fidelity, supra*, 212 Cal.App.4th 1556, 1562 [quoting *People v. American Bankers Ins. Co. (1987) 191 Cal.App.3d 742, 747-748*].)

The *International Fidelity* Court also discussed *People v. Sacramento Bail Bonds ("Sacramento") (1989) 210 Cal.App.3d 118*, which held that a defendant charged with a felony was "lawfully required" to be present at a status conference where the defendant was present when the date and time of the hearing were set and a rule of court required his presence despite the fact that he was not specifically ordered to be present. (*International Fidelity, supra*, 212 Cal.App.4th at 1563-64 [*33] [citing *Sacramento, supra*, 210 Cal.App.3d 118].) The *Sacramento* Court did not address whether § 977 alone was sufficient to compel the defendant's presence. In *Sacramento*, a rule of court required the defendant's presence at a trial readiness conference, and *International Fidelity* indicated that even absent the rule of court, § 977 was sufficient. (*Ibid.*) It stated,

"In [*Sacramento*] the defendant was charged with a felony; consequently there was no statutory authorization for his attorney to appear in his absence; on the contrary, subdivision (b) of section 977 compelled his personal attendance, unless he executed a written waiver of his presence, with leave of court." (*Ibid.*)

[*People v. Indiana Lumbermens Mutual Ins. Co. \("Indiana"\) \(2011\) 194 Cal.App.4th 45*](#) also supports § 977's relevance to bail forfeiture proceedings. The *Indiana* Court took for granted that § 977 applies to bail forfeiture. In *Indiana*, the defendant executed a waiver of appearance. (*Id. at 47.*) Thereafter, he did not appear on December 4, 2007, the date the preliminary hearing was set, but did appear through counsel. ([*34] *Id. at p. 48.*) However, the matter was continued and the defendant appeared at the continued date. (*Ibid.*) When bail was subsequently forfeited, the surety argued that because a § 977 waiver cannot excuse a felony defendant's appearance at the preliminary hearing, the court lost jurisdiction to forfeit bail when it failed to do so on December 4, 2007. (*Id. at 49.*) The appellate court rejected this argument, reasoning that the matter was not called for preliminary hearing on December 4, 2007, but rather only for a continuance. (*Ibid.*) The *Indiana* Court found that because a § 977 waiver was in place, the trial court properly did not forfeit bail when the defendant did not appear for the continuance. (*Id. at 50-52.*) Thus, if there had not been a waiver, the *Indiana* Court would have found the defendant was required to appear and would have had to forfeit bail when the defendant first failed to appear.

The relationship between § 977 and § 1305 was also addressed in [*People v. Jimenez, \(1995\) 38 Cal.App.4th 795*](#). The *Jimenez* Court explained that although § 977 was "adopted to protect the defendant's [*35] due process rights, it nonetheless mandates his or her presence." (*Id. at 800, fn 8.*) It went on to state that "[t]here is no danger [section 977] would be used unfairly against a defendant who was ignorant of the court date because section 1305 only allows bail forfeiture if the defendant fails to appear without sufficient excuse." (*Ibid.*)

In *Jimenez*, the defendant failed to appear for execution of judgment following appeal; thus his appearance was required under § 1305, subd.(a)(5). Accordingly, the *Jimenez* Court did not have to determine whether his presence would also have been required under § 977, subd.(b). (*Ibid.*) Although the *Jimenez* Court did not make a specific holding, it agreed with the People's position therein that § 977 required the defendant to appear. (*Ibid.*)

[*People v. North Beach Bonding Co. \("North Beach"\) \(1974\) 36 Cal.App.3d 663*](#) and [*People v. Classified Ins. Corp. \("Classified"\) \(1985\) 164 Cal.App.3d 341*](#) do not compel a different result. The situation here is completely distinguishable from *North Beach* and *Classified*: In both those cases, the issue was whether the [*36] court could forfeit bail at a hearing for which the defendant had no notice. Here, Chavezgarcia had notice; she was present in court when the January 3, 2013 hearing was set.

In *North Beach*, the defendant was to appear on March 24, 1972 at 5:00 p.m. to surrender himself for execution of judgment. ([*North Beach, supra, 26 Cal.App.3d at 667.*](#)) On March 24, 1972 at 3:30 p.m., his attorney appeared in court without him and applied for a stay of execution of judgment and bail pending appeal, which was denied. (*Id. at 667-68.*) The appellate court rejected the surety's argument that § 977 compelled the court to declare a forfeiture when the defendant did not appear at the 3:30 p.m. hearing on the application. (*Id. at 668.*) It reasoned, "It is absurd to contend that an attorney by appearing without his client an hour and one-half before the latter was directed to appear could place his client in default." (*Id. at 669.*)

Classified relied on *North Beach* to find that a defendant was not "lawfully required" to appear at a hearing on a motion to set aside the information pursuant to § 995 for which he had no notice. [*37] ([*Classified, supra, 164 Cal.App.3d 341, 343.*](#)) In *Classified*, the defendant was to appear at the trial confirmation hearing set on May 2, 1983. (*Ibid.*) On March 25, 1983, the defendant's attorney moved to set aside the information and informed the court that he had lost touch with the defendant. (*Ibid.*) The court (improperly) forfeited bail. (*Ibid.*) As in *North Beach*, the *Classified* Court's concern was the inequitable result of allowing the court to forfeit bail for a defendant's nonappearance when the defendant had no notice:

As in [*North Beach*], [the People's] construction of section 1305, by reference to section 977, would lead to an absurd result here. The construction urged by [the People] would permit [the defendant's] trial counsel to place [the defendant] in default without notice of the motion or date of appearance. Such a construction would clearly be inconsistent with the purpose of section 977 as above stated.

(*Id. at 346*, emphasis added; see also *People v. American Bankers Ins. Co. (1990) 225 Cal.App.3d 1378, 1382.*)

The *North Beach* and *Classified* Courts did [*38] not address, nor is there any indication they intended their opinions to apply to, situations where the defendant was present when the next hearing (at which bail was forfeited) was set. As the *Jimenez* court discussed, finding that the mandatory language of § 977 can make a defendant's appearance "lawfully required" does not run afoul of the Legislative intent of the statute. (*Jimenez, supra, 38 Cal.App.4th at 800, fn. 8.*) Had *Classified* and *North Beach* considered that the defendant's nonappearance was "excused" under § 1305, the potentially "absurd results" would have been avoided. (See §§ 1305 and 1305.1.) In this case, there was no excuse for Chavezgarcia's non-appearance, and she was lawfully required to appear under § 977.

CONCLUSION

Petitioner County respectfully requests this Court grant review and clarify the issues of: whether a defendant is lawfully required to appear pursuant to § 1269b; whether a defendant may be lawfully required to appear if a court has not used the exact words "you are ordered to appear"; and whether a defendant is lawfully required to appear pursuant to § 977.

DATED: October 26, 2015

Respectfully [*39] submitted,

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By /s/ [Signature]
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Attorneys for the County of Los Angeles

CERTIFICATE OF WORD COUNT PURSUANT TO RULE 8.204(c)

The text of this document consists of 8,650 words as counted by the Microsoft Office Word 2010 program used to generate this document.

DATED: October 26, 2015

Respectfully submitted,

MARY C. WICKHAM
Interim County Counsel

By /s/ [Signature]
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DECLARATION OF SERVICE

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 October 26, 2015, I served the attached

PETITION FOR REVIEW

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 [*40] mailing list:

(BY MAIL) by sealing and placing the envelope for collection and mailing on the date and at the place shown above following our ordinary business practices. I am readily familiar with this office's practice of collection and processing correspondence for mailing. Under that practice the correspondence would be deposited with the United States Postal Service that same day with postage thereon fully prepaid.

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

Executed on October 26, 2015, at Los Angeles, California.

Anna Pacheco

Type or Print Name of Declarant and, for personal service by a Messenger Service, include the name of the Messenger Service

/s/ [Signature]

Signature

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