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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. THE NORTH RIVER INS. CO., Defendant and Appellant; BAD BOYS BAIL BONDS, Real Party in Interest and Appellant.	B269234 Los Angeles County Super. Ct. Nos. SJ14101/PA079550-01; SJ4102/PA079550-02

APPEALS from judgments of the Superior Court of Los Angeles County, David Walgren and Kerry Bensinger, Judges. Affirmed.

Jefferson T. Stamp for Defendant and Appellant, and Real Party in Interest and Appellant.

Mary C. Wickham, County Counsel, Ruben Baeza, Jr., Assistant County Counsel, and Michael J. Gordon, Deputy County Counsel for Plaintiff and Respondent.

INTRODUCTION

A surety and its bail agent appeal the trial court's entry of summary judgment on the surety's forfeited bail bonds after it denied the bail agent's motion to vacate forfeiture and exonerate the bonds under Penal code section 1305, subdivision (g) (section 1305(g)). The bonds were forfeited after the defendants for whom the bail had been posted failed to appear at their arraignments, having fled to Sinaloa, Mexico. After locating the criminal defendants, the bail agent brought them before a local Mexican official, the "Síndico of Juan Aldama," who filled out a pre-typed affidavit attesting to their identities. The bail agent's counsel sent the information to the district attorney, who determined extradition of the defendants was not feasible.

The trial court denied the bail agent's subsequently filed motion, finding the bail agent failed to demonstrate the "síndico" was a law enforcement officer as required by section 1305(g). The trial court also found the district attorney adequately demonstrated extradition was infeasible and thus did not have the ability to elect extradition. Because the district attorney must have elected not to extradite defendants for section 1305(g) to apply, the trial court denied the motion on this ground, too. We find no error and affirm.

FACTS AND PROCEDURAL BACKGROUND

North River Insurance Company (surety), through its agent Bad Boys Bail Bonds (bail agent) (collectively Appellants) posted bail bonds on January 27, 2014, for the release of criminal

defendants Carlos Montoya and Juan Quintero (criminal defendants). Criminal defendants were charged with felonies for selling, transporting, or offering to sell or transport heroin. When they failed to appear at their arraignment on February 21, 2014, the trial court forfeited their bail bonds. Notices of forfeiture were mailed to appellants on February 25, 2014. They indicated appellants had 185 days from that date (until August 29, 2014) to produce the criminal defendants in court or move to set aside the forfeiture.

Before that appearance period expired, the bail agent moved to extend it for both criminal defendants under Penal Code section 1305.4 on the grounds the bail agent had learned they were in Sinaloa, Mexico and was in the process of obtaining identification affidavits under section 1305(g). The trial court granted the motions and extended the appearance periods to February 26, 2015. On February 24, 2015, the bail agent filed motions to further extend the appearance periods. The trial court extended the appearance periods until May 7, 2015.

On May 4, 2015, the bail agent's counsel emailed the deputy district attorney to inform her the criminal defendants had been located in Sinaloa, Mexico. He attached identification affidavits for the criminal defendants and requested an extradition decision under section 1305(g). The bail agent's counsel appeared *ex parte* the next day seeking a writ of mandate to compel a decision. The trial court continued the hearing to May 7, 2015, and denied the motion. At that hearing, respondent reserved its right to determine whether the affiant who signed the identification affidavits was a law enforcement officer under section 1305(g) and contended extradition was infeasible.

By this time, the appearance period was about to expire. That same day the bail agent filed motions to vacate forfeiture and exonerate the bonds under section 1305(g). The trial court denied the bail agent's motions after a hearing and entered summary judgments in favor of respondent on the forfeited bonds.[1] Thereafter, appellants moved to set aside the judgments. The trial court denied appellants' motions on November 20, 2015.

Appellants timely filed two separate notices of appeal from the summary judgments and orders denying their motions to set them aside (appeal numbers B269234 and B269236). We consolidated the two appeals under appeal no. B269234 and ordered all documents to be filed under that number. We also granted respondent's motion to augment the record to include the February 21, 2014 reporter's transcript.

CONTENTIONS

Appellants contend the summary judgments forfeiting the bonds were in error because the bond forfeitures should have been vacated and the bonds exonerated under section 1305(g). Appellants argue the judgment should be reversed because: the identification affidavits confirmed defendants were detained in the presence of a "law enforcement officer" within the meaning of section 1305(g); the district attorney failed to meet its burden of showing it was not feasible to extradite the criminal defendants from Mexico, effectively electing not to seek extradition; and respondent's feasibility argument was barred by estoppel.

Appellants initially argued the trial court failed to declare the bonds were forfeited in open court, requiring us to reverse the

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[1] We discuss the evidence presented in support of and in opposition to the bail agent's motions in the Discussion section below.

summary judgments for lack of jurisdiction under section 1305. In its motion to augment, which we granted, respondent submitted the February 21, 2014 reporter's transcript, which reflects the trial court did indeed declare the bonds were forfeited in open court. Thus, appellants' argument has no basis, and we do not address it below.

DISCUSSION

1. *Standard of review and applicable law*

Appellants' appeal essentially rests on the trial court's denial of the bail agent's motions to vacate the forfeiture and exonerate the bonds. We review the trial court's ruling on a motion to vacate or set aside a bail forfeiture and exonerate the bail bond for abuse of discretion. (*County of Los Angeles v. Fairmont Specialty Group* (2009) 173 Cal.App.4th 538, 542 (*Fairmont*).) "As the Supreme Court has noted, however, '[t]he abuse of discretion standard is not a unified standard; the deference it calls for varies according to the aspect of a trial court's ruling under review. The trial court's findings of fact are reviewed for substantial evidence, its conclusions of law are reviewed de novo, and its application of the law to the facts is reversible only if arbitrary and capricious.' " (*Id.* at p. 543.)

We consider the trial court's findings based on declarations or affidavits, the same as with oral testimony: " ' "We must accept the trial court's resolution of disputed facts when supported by substantial evidence; we must presume the court found every fact and drew every permissible inference necessary to support its judgment, and defer to its determination of credibility of the witnesses and the weight of the evidence. [Citation.]" ' " (*Santa Clara County Correctional Peace Officers' Assn., Inc. v. County of Santa Clara* (2014) 224 Cal.App.4th 1016, 1027.)

Penal Code section 1305 describes various situations when the court must vacate the forfeiture of bail and exonerate the bond. Subdivision (g) of the statute requires exoneration "where a defendant is not in custody and is beyond the jurisdiction of the state, is temporarily detained, by the bail agent, in the presence of a local law enforcement officer of the jurisdiction in which the defendant is located, and is positively identified by that law enforcement officer as the wanted defendant in an affidavit signed under penalty of perjury, and the prosecuting agency elects not to seek extradition after being informed of the location of the defendant." The bail agent/surety bears the burden to prove "the statutory prerequisites to an order vacating a bond forfeiture." (*People v. Financial Casualty & Surety, Inc.* (2017) 10 Cal.App.5th 369, 379 (*Financial Casualty*).)

The issues raised here under section 1305(g) are: (1) whether the bail agent met its burden to establish "a local law enforcement officer" signed the affidavits confirming the criminal defendants' identities; and (2) whether the district attorney met its burden to demonstrate extradition of the criminal defendants was not feasible.

2. ***Substantial evidence supports the trial court's finding that the bail agent failed to demonstrate the síndico was a law enforcement officer as required by section 1305(g)***

Here, the bail agent's investigator located the criminal defendants in Navolato, Sinaloa, Mexico. He brought them before Jose Carlos Trujillo Garcia, the "Síndico de Juan Aldama." The síndico filled in and signed what appear to be pre-typed identification affidavits, attesting that the criminal defendants were brought before him in Navolato, Sinaloa, Mexico "by an

authorized representative of Bad Boys Bail Bonds for the purpose of confirming [their] identity." Appellants argue that a "síndico" is a law enforcement officer within the meaning of section 1305.

Penal Code section 1305 does not define "law enforcement officer." Courts have concluded "the key to determining whether or not an individual is a law enforcement officer is if his or her primary duty is the enforcement of the law; that is, someone who is vigilant in enforcing criminal statutes and arresting violators." (*People v. Frontier Pacific Ins. Co.* (1999) 69 Cal.App.4th 1093, 1096-1098 (*Frontier*) [applying definition after examining the legislative history of section 1305, and courts' interpretations of the meaning of "law enforcement officer" and "peace officer" in other Penal Code sections].) In *Frontier*, the court applied this definition and affirmed the trial court's finding that the identification of a defendant by a notary public-attorney in Mexico did not meet the requirements of section 1305(g). (*Ibid.*) The bail surety presented no evidence to suggest the primary duty of a notary public or attorney was "enforcement of the law." (*Ibid.*) We apply this same definition to the evidence presented here.

Appellants argue the evidence presented to the trial court proved síndico Trujillo Garcia was a law enforcement officer. The bail agent supported its motion with: Trujillo Garcia's affidavits identifying the criminal defendants, in Spanish and English; a copy of his identification card in Spanish and an official English translation; a printout from the Navolato municipal government website in Spanish; and the declaration of the California licensed bail agent who temporarily detained the criminal defendants in Mexico, Michael Hayes. We address each piece of evidence below and describe the English version where provided.

The identification affidavits are titled, in type, "Identification Affidavit [¶] Califonia [*sic*] Penal Code 1305(g)." The text of section 1305(g) is typed in italics below the title, followed by the affidavit. The affidavit itself is typed with blanks filled out in handwriting and with boxes checked by hand. A portion of the typed declaration reads, "the above mentioned individual was brought before me by an authorized representative of Bad Boys Bail Bonds for the purpose of confirming his identity." Although the trial court did not make an explicit finding, given these affidavits are typed with blanks to be filled in, and the typed portion specifically refers to both the California Penal Code and Bad Boys Bail Bonds, we can (and the trial court could) reasonably infer the typed portions of the affidavits were pre-prepared by someone other than Trujillo Garcia, most likely by the bail agent. (*In re Marriage of Okum* (1987) 195 Cal.App.3d 176, 181-182.)

Appellants argue that Trujillo Garcia's declaration under penalty of perjury in the identification affidavits that he was a "law enforcement officer" is evidence that he was. The identification affidavits do include this declaration, but the declaration is part of the pre-typed portion of the affidavits. Trujillo Garcia filled in blanks in the affidavits by hand. Omitting the information filled in by Trujillo Garcia by hand, that portion reads:

"I, _____ the undersigned do hereby declare:
(Name of law enforcement officer)
That, I am a law enforcement officer in and for the City of _____, County of _____, State of _____."

The trial court may have given "little or no weight" to Trujillo Garcia's "statement" that he was a law enforcement

officer; it was not required to accept it as true. (*Tammen v. County of San Diego* (1967) 66 Cal.2d 468, 477 (*Tammen*).) Given the affidavit was completed on a form, likely pre-prepared by the bail agent, and Trujillo Garcia's position is not one within a traditional law enforcement agency, the trial court did not abuse its discretion in impliedly rejecting the declaration as proof that Trujillo Garcia was a "law enforcement officer." (*G & W Warren's, Inc. v. Dabney* (2017) 11 Cal.App.5th 565, 581.) Moreover, nowhere in the declaration does Trujillo Garcia state his primary duty as a síndico is to enforce the laws. Nor is there any indication that Trujillo Garcia understood what "law enforcement officer" meant in terms of section 1305(g), as respondent argues.

The bail agent's counsel also argued Trujillo Garcia's official identification card confirmed he was a law enforcement officer. Trujillo Garcia's title on the card, "Síndico de Juan Aldama," translates to, "Trustee of Juan Aldama." The card indicates Juan Aldama is part of the municipality of Navolato. Navolato's website also lists Trujillo Garcia as "Síndico de Juan Aldama." According to the translation, the back of the identification card states: "This credential certifies the bearer as public server of the current administration. We ask the civilian and military authorities to provide the necessary guarantee for the best performance of his duties."

The trial court found the identification card's statement asking civilian and military authorities to assist Trujillo Garcia in performing his duties did not demonstrate he was a law enforcement officer. In a colloquy with the bail agent's counsel, the trial court rejected his argument that the identification card confirmed Trujillo Garcia was a "commander" or otherwise had

authority over civil and military authorities or the authority to enforce laws. Appellants' brief does not further illuminate us as to how the identification card confirms Trujillo Garcia's primary duty as a síndico was to enforce the law or arrest violators. The translation presented supports the trial court's interpretation.

Nor did the bail agent present evidence of the primary duties of a "síndico," other than the declaration of its licensed bail agent Michael Hayes. Hayes declared he escorted the criminal defendants to "the local government office in Navalato [*sic*]." He then averred, "Mr[.] Jose Carlos Trujillo Garcia is the local government authority. Mr. Garcia is the authority and as such has the power to detain and enforce various local laws and ordinances for the township[ ] of Navalato [*sic*] also known as Juan Aldama." Hayes did not declare how he personally knew Trujillo Garcia had the authority to "detain and enforce" laws, however, other than to state he has had prior bonds exonerated based on "the same information provided to the court." Again, we infer the trial court gave little or no weight to this declaration, which was self-serving and provided no foundation that Hayes had personal knowledge of Trujillo Garcia's job duties. (Evid. Code § 702; *Tammen, supra*, 66 Cal.2d at p. 477; see also *People v. Surety Ins. Co.* (1978) 77 Cal.App.3d 533, 537 [inferring trial court rejected bail agents' declarations].)

The evidence presented by the bail agent does not establish that a síndico's primary duty is enforcement of the law. Rather, the evidence demonstrates Trujillo Garcia is a municipal trustee. In common English, a trustee is known as, inter alia, "one to whom something is entrusted," "a member of a board entrusted with administering the funds and directing the policy of an institution or organization," one "to whom property is legally

committed in trust" (Merriam-Webster Dict. (2018) <http://unabridged.merriam-webster.com/unabridged/trustee> [as of May 2, 2018]), and "[a] person into whose possession assets, property, etc., are put, to be held or administered for the benefit of another." (Oxford English Dict. (3d ed. 2015) <http://www.oed.com/view/Entry/207008?rskey=0l1V20&result=1#eid> [as of May 2, 2018].) And, as respondent notes, cases from long ago have described a "síndico" as a government officer who is "the collector of municipal fees." (*Holliday v. West* (1856) 6 Cal. 519, 524; see also *Kyburg v. Perkins* (1856) 6 Cal. 674, 674 [referring to síndico as "collector"].) None of these definitions supports appellants' argument that a síndico's job duties include the enforcement of laws.

Nor do appellants' authorities cited in their brief compel us to find Trujillo Garcia is a law enforcement officer, which appellants contend is a question of law. Appellants argue the analysis in *People v. Accredited Surety & Casualty Co.* (2016) 3 Cal.App.5th 1180, 1185 (*Accredited*) "makes . . . clear that a law enforcement officer is defined by the government of the local jurisdiction." Appellants misconstrue *Accredited*.

There, the issue was whether Mexican *police officers* from a different area of Mexico than where the defendant was located were *local* law enforcement officers under section 1305(g). The police officers—a member of a unit of the Baja California State Police and a sworn peace officer of the city of Mexicali—undisputedly were law enforcement officers. (*Accredited, supra,* 3 Cal.App.5th at p. 1183.) The court held the language of subdivision (g) required the law enforcement officers to be from the local jurisdiction where the defendant was located and that the police officers there were not. (*Id.* at pp. 1184-1185.)

Thus, the only question before the court was whether the police officers were *local* law enforcement officers, not whether they were law enforcement officers at all. (*Id.* at pp. 1183-1184.)

Appellants also rely on *County of Los Angeles v. American Contractors Indemnity Co.* (2007) 152 Cal.App.4th 661 (*American Contractors*), arguing that because the government official there was deemed a law enforcement officer, Trujillo Garcia should be also. Appellants' brief notes the surety in that case submitted an affidavit from the " 'Zone Coordinator of the State Ministerial Police, State of Guerrero, Mexico' " that was " '***written on the letterhead of the Justice Department of the State of Guerrero***.' " (Original emphasis; quoting *id.* at p. 664.) There, the court ruled it was prejudicial error for the trial court to strike the declaration. The court explained the Zone Coordinator's affidavit "was not prepared for use at a court hearing to prove the truth of the matters asserted – that [affiant] was a law enforcement officer of the State of Guerrero . . . . Rather, the affidavit was prepared in order to meet the requirement of section 1305(g) that the bail agent informed the district attorney 'of the location of the defendant.' " (*Id.* at pp. 667-669.) After the district attorney elected not to seek the defendant's extradition, the surety submitted the affidavit to prove it had complied with section 1305(g). (*Id.* at p. 668.)

The facts here are quite different. First, the trial court here did not strike the purported law enforcement officer's affidavit. Second, the bail agent submitted Trujillo Garcia's declaration not only to prove it had located the criminal defendants, but also to prove he was a law enforcement officer. And, the district attorney did not argue extradition was not feasible in *American Contractors*, as is the case here, but elected

not to extradite the defendant. Finally, and most importantly, the title, "Zone Coordinator of the State Ministerial Police," by its plain language implies the holder has law enforcement duties, whereas "síndico," and its translation "trustee," do not. Nor was the affidavit here prepared on official letterhead, much less that from the Justice Department, which gave an indicia the affiant was at least associated with law enforcement.

We note that in opposition to the bail agent's motion, the County presented the deputy district attorney's declaration. In it, she declared she spoke to Detective Joe Bahena from the Los Angeles Police Department Fugitive Task Force, who speaks fluent Spanish and with whom she has previously worked on fugitive and extradition matters. She asked the detective to confirm the credentials of Trujillo Garcia. According to the declaration, the detective called the district attorney on May 11, 2015 and told her he contacted the agent with the state of Sinaloa, Mexico, Anti-Kidnapping Unit. Detective Bahena informed her, based on his conversation with the Sinaloa agent, that Trujillo Garcia was a "community representative in the municipality," not a law enforcement officer. The district attorney declared Detective Bahena told her he learned from the agent that Trujillo Garcia's title "is akin to a civil servant whose job functions are similar to a mayor."

The bail agent objected to the declaration on the ground it constituted "double hearsay," and on appeal argues its admission was judicial error. At the hearing on the bail agent's motion, the trial court ruled it would not "strike any information from the various pleadings and/or declarations," explaining, "I think the court is competent to evaluate the testimony, whether hearsay or not, and . . . hearsay ha[s] been admitted, I'll note, by both sides

in this case." Even if the trial court erred in overruling the bail agent's hearsay objection, any error was not prejudicial. (Evid. Code § 353; Code Civ. Proc. § 475.) The trial court did not refer to or state it relied on the information from Detective Bahena described in the deputy district attorney's declaration in reaching its conclusion concerning Trujillo Garcia and, thus, we presume it did not. (*Schnabel v. Superior Court* (1993) 5 Cal.4th 704, 718 ["[A]n 'order of a lower court is presumed to be correct on appeal, and all intendments and presumptions are indulged in favor of its correctness.' "].) Further, the bail agent bore the burden of proving all prerequisites for exoneration under section 1305(g) were satisfied. (*Financial Casualty, supra,* 10 Cal.App.5th at p. 379.) The trial court found the bail agent had not "satisfactorily shown that Mr. Garcia is law enforcement," based on *the bail agent's* proffered evidence—namely, Trujillo Garcia's declaration and identification card and Hayes's declaration.

On this record, viewing the evidence in the light most favorable to respondent and deferring to the trial court's implied determinations of credibility, we conclude substantial evidence supports the trial court's finding that the bail agent failed to meet its burden to prove that Trujillo Garcia is a "local law enforcement officer." (*Lenk v. Total-Western, Inc.* (2001) 89 Cal.App.4th 959, 968.) Thus, the trial court did not abuse its discretion in denying the motion to vacate the bail forfeiture and exonerate the bond.

3. ***Substantial evidence supports the trial court's finding extradition would be infeasible***

Assuming *arguendo* the síndico is a law enforcement officer, the trial court did not abuse its discretion in denying the bail agent's motion to vacate the forfeiture because extradition

was not feasible. The feasibility of extradition is a question of fact that we review under the substantial evidence test. (*Fairmont, supra*, 173 Cal.App.4th at pp. 543-544.) Appellants contend respondent did not meet its burden to demonstrate extradition of the criminal defendants from Mexico was infeasible. We conclude substantial evidence supports the trial court's finding it did.

a. *Applicable law*

Relief from bail forfeiture under section 1305(g) is possible only if "the prosecuting agency elects *not* to seek extradition after being informed of the location of the defendant." (Italics added.) "[T]he timetable and criteria for deciding whether to extradite [falls] squarely in the hands of the prosecuting agency." (*Financial Casualty, supra*, 10 Cal.App.5th at p. 380.) Thus, if a surety requests "a decision on extradition too close to the end of the appearance period," a prosecuting agency is not obligated to decide whether to extradite the defendant before that period expires. (*Id.* at p. 384 [citing *People v. Tingcungco* (2015) 237 Cal.App.4th 249, 256-259].) Of course, the prosecuting agency may not act in bad faith in making this determination. (*Financial Casualty,* at p. 381.)

When the record demonstrates "extradition is not feasible, the prosecutor has no real choice in deciding whether to seek the defendant's extradition, and the terms of section 1305, subdivision (g) have not been met." (*County of Orange v. Ranger Ins. Co.* (1998) 61 Cal.App.4th 795, 804 (*County of Orange*).) If "the host country, as a matter of policy and practice, refuses to grant extradition requests in the category of cases involved in the controversy at hand," extradition "will be deemed infeasible." (*Id.* at p. 803.) Because feasibility of extradition in a particular case

is a question of fact (*Fairmont, supra*, 173 Cal.App.4th at p. 544), "[e]ach case must be evaluated individually to determine the feasibility of obtaining extradition under the circumstances presented." (*County of Orange*, at p. 804, fn. 5.)

b. *The district attorney did not make an extradition election before the exoneration period expired because extradition was infeasible*

Here, the bail agent first requested an extradition decision on May 4, 2015—three days before the May 7, 2015 expiration of the exoneration period. At the May 5, 2015 ex parte hearing on the bail agent's petition for writ of mandate to compel an extradition decision, the deputy district attorney informed the court, "It is very likely that it may be infeasible for us to extradite from this region at this time of these two defendants. [¶] However, I will not know that unless I confer with my counterpart at the office of international affairs, and he will, in turn, confer with the state department. I don't see how that can be done within the two days that's been provided to us. [¶] . . . [¶] We are again at the 11th hour given these documents and asked to make a decision, [a] meaningful decision, . . . an informed decision, which we cannot do in the time counsel has given us." The trial court continued the hearing to May 7, 2015 and respondent submitted an opposition to the bail agent's motion with the district attorney's declaration. In both her declaration and at the hearing, the deputy district attorney confirmed extradition of the criminal defendants was infeasible, and she was "unable to make an extradition decision."

Accordingly, if extradition were not feasible, the bail agent was not entitled to relief from forfeiture of the bonds under section 1305(g) because the district attorney could not elect

whether or not to extradite the criminal defendants before the appearance period expired on May 7, 2015. Nor was the district attorney required to determine the feasibility of extradition before the exoneration period given the bail agent did not seek the decision until the last minute. Thus, respondent contends it did not make an election by May 7 and, therefore, the bail agent failed to satisfy section 1305(g). Because the district attorney asserted extradition was infeasible at the May 7 hearing, however, we consider whether substantial evidence supports the trial court's finding extradition was not feasible under the circumstances.

In support of its infeasibility argument, respondent submitted declarations from the deputy district attorney. She was hired as a deputy district attorney in 1999 and is assigned to the "Extradition Services Section." At the time, she was "the senior attorney to evaluate the suitability of cases for international extradition for criminal defendants . . . who have fled to foreign countries." Four pages of her declaration submitted in opposition to the bail agent's petition for writ of mandate outline the steps she takes when asked to make an extradition decision for a fugitive allegedly detained in a foreign country. She declared that if an extradition treaty with the foreign country exists, as it does here, she must evaluate the type of proof required for the extradition documents under the treaty. She also must consider any protocols required by the Office of International Affairs (OIA), the office charged with approving international extraditions, and the government of the foreign country. She averred that, "[o]ne of these protocols requires a requesting country [here, the United States] to provide first person affidavits because Mexico does not allow the use of any

hearsay statements in the extradition package;" and, Mexico also "requires corroboration of the testimony of a law enforcement official by a civilian witness."

After receiving the bail agent's request, the deputy district attorney emailed her attorney contact at OIA in Washington D.C. about the "feasibility of extraditing" the criminal defendants. Her contact handles "all extradition matters originating from California to Mexico." The deputy district attorney declared the OIA attorney informed her that "the extradition documents would need to establish the prima facie case through testimony which could [be] corroborated by a civilian." She stated that because there was no civilian witness in this case to corroborate the arresting deputy's testimony, she would not be able to produce the required evidence to extradite the defendants, making extradition infeasible.

The district attorney confirmed this assessment at the May 7, 2015 hearing. She explained that in her eight-year career, which included drafting "dozens of extradition documents . . . the majority . . . for Mexican extraditions," she had "never, ever been able to successfully extradite anybody on one affidavit, whether it was a civilian affidavit or law enforcement agent affidavit. [¶] The need for corroboration is essentially part of the extradition documents which must be submitted to Mexico."

At the July 15, 2015 hearing on the bail agent's motion to vacate the bond forfeiture, the trial court concluded exoneration was not available under section 1305(g). It ruled, "the court is satisfied, based on the evidence and declarations submitted on the People's position, that they do not have the option to elect to extradite because the extradition is infeasible. Therefore, the election is not before them."

The evidence presented by the deputy district attorney was sufficient to establish infeasibility. In *Fairmont*, the court found substantial evidence supported the trial court's finding extradition of a criminal defendant from Honduras was not feasible based on the same deputy district attorney's declaration. (*Fairmont, supra*, 173 Cal.App.4th at pp. 540-541.) There, the treaty at issue provided Honduras was not required to extradite its citizens. (*Id.* at p. 545.) The deputy district attorney declared her review of her office's records indicated none of the Los Angeles District Attorney's attempts to extradite a citizen of Honduras from Honduras had been successful. (*Id.* at p. 541.) The court also noted the deputy district attorney relied on "inquiries of the OIA regarding the feasibility of extradition," as she did in this case. (*Id.* at p. 545; see also *County of Orange, supra*, 61 Cal.App.4th at pp. 803-804 [affirming trial court's finding extradition was not feasible based on treaty and declaration of deputy district attorney, an extradition specialist].)

While the treaty here does not explicitly state Mexico requires a corroborating civilian witness affidavit as part of an extradition request, the deputy district attorney's experience of never having obtained extradition from Mexico without a corroborating affidavit, and her confirmation with OIA that the Mexican government required one, was sufficient to demonstrate extradition of the criminal defendants was not feasible without one.[2] This evidence demonstrates Mexico has a "policy and

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[2] At the July 15, 2015 hearing, the bail agent objected on hearsay grounds to the deputy district attorney's restatement of what the OIA attorney had told her. Appellants did not raise this same objection as to this part of her declaration on appeal. As we said above, the trial court did not strike any information from

practice" of refusing to extradite defendants where there is no corroborating witness affidavit. It is undisputed that other than the criminal defendants themselves, the arresting deputy was the only known witness to the criminal defendants' alleged transportation of heroin. Thus, substantial evidence supported the trial court's finding extradition of the criminal defendants from Mexico would not be feasible.

The bail agent argued each co-defendant could have provided the corroborating civilian affidavit against the other, or other civilian witnesses could have been found. But the bail agent had not obtained any such declarations as of May 7, 2015, the expiration date of the exoneration period. Moreover, whether other witnesses to the crime existed or the criminal defendants would have testified against each other or submitted to a summary extradition procedure, as appellants also argue, is speculative. "Feasible means 'practicable—i.e., capable of being done or carried out. It does not mean "possible" or "probable" . . . .' (Garner, Modern Legal Usage (2d ed. 2001) p. 351.)" (*Fairmont, supra*, 173 Cal.App.4th at p. 545, fn. 3.) At the time the district attorney was asked to make an extradition decision—a mere three days before the bail agent would be foreclosed from seeking relief—no corroborating civilian witness existed.

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any of the pleadings or declarations, and thus the deputy district attorney's reliance on the OIA attorney's answer to her email is properly before us. Substantial evidence supports the trial court's finding, however, even without the OIA attorney's statement based on the deputy district attorney's eight years of experience of *never* having extradited a fugitive successfully from Mexico without a corroborating affidavit.

Appellants' additional arguments are equally untenable. They contend we should follow a federal district court case where that court found the government had not presented substantial evidence extradition would have been futile. There, investigators and prosecutors had one conversation about the possibility of extradition more than a year after learning of the fugitive defendant's location. (*U.S. v. Fernandes* (D.D.C. 2009) 618 F.Supp.2d 62, 69.) Not only are we not bound by a federal district court opinion, but the court there was considering a motion to dismiss for violation of the Sixth Amendment's right to a speedy trial. In any event, the facts of *Fernandes* are inapposite. Here, the deputy district attorney did not wait a year after learning of the criminal defendants' location to have a conversation about extradition. Contrary to appellants' contention, her decision that extradition was infeasible was not based solely on her exchange with the OIA attorney, but also on her eight years of experience and expertise in preparing extradition requests to Mexico. To the extent appellants contend the district attorney made her decision too quickly, the bail agent created that urgency by seeking the decision with only three days left to move to exonerate the bail bonds.

Appellants also argue the district attorney elected not to seek extradition "because there is insufficient evidence to support the prosecution." They cite to a statement in the Los Angeles County District Attorney's Office, Legal Policies Manual that "[e]xtradition for international fugitives should be approved only when the case is of such significant interest to the prosecutor, investigating agency, victim and public that the case will remain prosecutable while the extradition is pending." This "policy" does not make extradition here feasible, however. As the deputy

district attorney described in her declaration, she must take "a number of steps" before she can elect to extradite a defendant or not. Only after she has confirmed the accuracy of the identification affidavits and determined the feasibility of extradition does she analyze whether to "choose to extradite that defendant, given available resources." Section 1305(g) does not require the district attorney to decide whether it will seek extradition if extradition is futile. (*County of Orange, supra*, 61 Cal.App.4th at p. 803 [concluding the government's duty "in deciding whether to seek a defendant's extradition under section [1305(g)], . . . does not require the government to undertake futile acts"].)

Nor do the other various additional documents the bail agent provided to the trial court negate the People's evidence that extradition was infeasible here because no corroborating civilian witness exists.[3] Accordingly, substantial evidence supports the trial court's finding that the People did not have the option to elect to extradite the criminal defendants because extradition is infeasible.

4. ***Appellants did not demonstrate estoppel applies***

Finally appellants argue the trial court erred because the respondent was estopped from asserting extradition was

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[3] The bail agent submitted, among other documents: a copy of the U.S.-Mexico Extradition Treaty (also produced by respondent); excerpts from various secondary sources; a publication by the Kansas County and District Attorneys Association; an email from an OIA attorney filed by a deputy county counsel for Merced County in an unrelated case; and a copy of the Treaty on Cooperation between the United Mexican States and the United States of America for Mutual Legal Assistance.

infeasible based on the lack of a corroborating civilian witness when it did not raise that objection in response to the bail agent's prior motions to extend the appearance period. Appellants' argument is meritless.

Whether conduct is sufficient to apply the doctrine of estoppel "is a factual question entrusted to the trial court's discretion. [Citation.] The issue is whether, viewing the evidence and all the inferences therefrom in the light most favorable to the [party to be estopped], there was substantial evidence upon which the court could reasonably have found as it did." (*Cuadros v. Superior Court* (1992) 6 Cal.App.4th 671, 675.) Estoppel ordinarily requires that the party to be estopped misrepresents or conceals facts uniquely within its knowledge or successfully asserts inconsistent positions in official proceedings. (*People v. American Contractors Indemnity Co.* (2006) 136 Cal.App.4th 245, 251.) Neither situation is present here.

Penal Code section 1305.4 allows a trial court to extend the appearance period upon a showing of good cause. In its motions to extend, the bail agent argued it had good cause because there was a reasonable likelihood it would apprehend the criminal defendants. The bail agent submitted its investigator's declarations that the criminal defendants had been located in Sinaloa, Mexico and that extensions were needed to obtain identification affidavits. Respondent did not oppose those motions.

The feasibility of extraditing the criminal defendants was not at issue on the extension motions and respondent took no position on the feasibility of extradition in connection with those motions. Respondent did not make any representations about extradition and it did not have a duty to advise the bail agent

about the feasibility of extraditing the criminal defendants. Thus, there is no basis for an estoppel against respondent.

Appellants rely on *People v. Accredited Surety & Casualty Co., Inc.* (2013) 220 Cal.App.4th 1137, disapproved on another ground in *People v. Financial Casualty & Surety, Inc.* (2016) 2 Cal.5th 35, 46, to support their argument. There, the court found the surety was estopped from challenging the timeliness of the entry of summary judgment because it acquiesced to "the scheduling error" that led to its late entry. (*Id.* at p. 1140.) No acquiescence occurred here and, as we have said, respondent had no duty to advise the bail agent about its position on extradition.

DISPOSITION

The judgment is affirmed. Respondent shall recover its costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

EGERTON, J.

We concur:

EDMON, P. J.

DHANIDINA, J.*

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.