

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED  
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24



DIVISION ONE  
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IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

STATE OF ARIZONA, ) 1 CA-CV 09-0495  
)  
Appellee, ) DEPARTMENT E  
)  
v. ) **MEMORANDUM DECISION**  
) (Not for Publication -  
LIBERTY BAIL BONDS LLC, ) Rule 28, Arizona Rules  
) of Civil Appellate  
Appellant. ) Procedure)  
)  
)  
)

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Appeal from the Superior Court in Maricopa County

Cause No. CR2009-105069-001 DT

The Honorable Lisa Ann Vandenberg, Commissioner

**AFFIRMED**

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Reed W. King  
Attorney for Appellant

Phoenix

Sarah L. Corcoran  
Attorney for Appellee

Phoenix

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**H A L L**, Judge

¶1 Liberty Bail Bonds (Liberty) appeals from the trial court's judgment ordering the forfeiture of Donald Lee Jarmon's appearance bond. For the reasons that follow, we affirm the judgment.

## FACTS AND PROCEDURAL HISTORY

¶2 On January 1, 2009, Jarmon was arrested and charged by direct complaint with one count of possession of marijuana for sale, a class two felony, one count of possession of drug paraphernalia, a class six felony, and one count of forgery, a class four felony. Soon thereafter, Jarmon was released from police custody on a secured appearance bond posted by Liberty in the amount of \$81,000. Pursuant to the terms of his signed release, Jarmon was required to appear at a January 22, 2009 status conference and a January 26, 2009 preliminary hearing. The written conditions of release also warned that "a warrant will issue" if Jarmon failed to appear.

¶3 On January 22, 2009, Jarmon failed to appear at the scheduled status conference and the trial court ordered a bench warrant for his arrest. At the same time, the trial court also scheduled a bond forfeiture hearing for February 14, 2009. At the February 14, 2009 forfeiture hearing, Jarmon again failed to appear and the trial court granted Liberty's<sup>1</sup> request to continue the hearing until May 12, 2009. At the May 12, 2009 forfeiture

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<sup>1</sup> As noted in the State's answering brief, a non-attorney representative appeared on Liberty's behalf at all of the hearings. In a recent opinion of this court, we held that a bonding company that did not appear through counsel in the superior court "effectively failed to appear at all." *State v. Eazy Bail Bonds*, 1 CA-CV 09-0278 (Ariz. App. Apr. 22, 2010); see also Ariz. R. Sup. Ct. 31. Neither party has raised any issue regarding Liberty's representative in the superior court and we therefore do not address this matter.

hearing, Jarmon again failed to appear and the trial court again granted Liberty's request to continue the hearing until June 9, 2009 "to allow the bonding company time to locate and surrender [Jarmon] on the bench warrant."

¶14 At the June 9, 2009 bond forfeiture hearing, Jarmon again failed to appear. As stated in the trial court's minute entry, the court reviewed the circumstances underlying its issuance of the bench warrant and found "no reasonable cause has been presented for [Jarmon's] failure to appear." The trial court then ordered that Jarmon's appearance bond be forfeited in full.

¶15 Liberty timely appealed. We have jurisdiction pursuant to Arizona Revised Statutes (A.R.S.) section 12-2101(B) (2003).

#### DISCUSSION

¶16 On appeal, Liberty argues that the trial court violated Jarmon's constitutional rights by issuing a bench warrant for his arrest without sufficient evidence to establish probable cause that his failure to appear was willful. This argument is without merit.

¶17 "On appeal, we examine the evidence in the light most favorable to support the judgment of the trial court." *State v. Old West Bonding Co.*, 203 Ariz. 468, 471, ¶ 9, 56 P.3d 42, 45 (App. 2002) (internal quotation omitted). "We review a trial court's order forfeiting the bond for an abuse of discretion." *Id.*

¶18 As noted by the State, Liberty did not challenge the issuance of the bench warrant in the trial court and has therefore

forfeited any right to raise the claim on appeal.<sup>2</sup> See *Trantor v. Fredrikson*, 179 Ariz. 299, 300, 878 P.2d 657, 658 (1994). In addition, the State also correctly points out that Liberty may not vicariously assert Jarmon's constitutional rights without first demonstrating that he is "unable to assert the constitutional rights on his [] behalf." *Kerr v. Killian*, 197 Ariz. 213, 217, ¶ 16, 3 P.3d 1133, 1137 (App. 2000). Liberty has not attempted to make such a showing.

¶19 More importantly, however, the trial court did not violate Jarmon's constitutional rights by issuing the bench warrant for his arrest. Liberty does not contest that Jarmon was lawfully arrested in the first instance and that, at the time of his release, he signed a form notifying him that a warrant for his arrest would issue if he failed to attend the January 22, 2009 status conference. As set forth in Arizona Rules of Criminal Procedure (Rule) 7.6(c)(1), "[i]f at any time it appears to the court that the released person has violated a condition of an appearance bond, it shall issue a bench warrant for the person's arrest." Moreover, Rule 9.1 provides that "[t]he court may infer that an absence is voluntary if the defendant had personal notice

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<sup>2</sup> Although the hearings were recorded, Liberty did not supply any transcripts and the limited appellate record does not reflect that the bonding company raised any challenge to the issuance of the bench warrant. See *Ashton-Blair v. Merrill*, 187 Ariz. 315, 317, 928 P.2d 1244, 1246 (App. 1996) ("We may only consider the matters in the record before us. As to matters not in our record, we presume that the record before the trial court supported its decision.").

of the time of the proceeding, the right to be present at it, and a warning that the proceeding would go forward in his or her absence should he or she fail to appear." Thus, contrary to Liberty's appellate argument, the State did not need to present evidence that Jarman's absence was willful. Instead, the burden of proof was on Jarman, or Liberty in order to protect its posted bond, to present evidence that Jarman's absence was excusable. See Ariz. R. Civ. P. 7.6(c)(2) ("If at the hearing, the violation is not explained or excused, the court may enter an appropriate order of judgment forfeiting all or part of the amount of the bond.").

¶10 As reflected in the June 9, 2009 minute entry and the signed judgment, Jarmon never appeared and, although the trial court provided the bonding company with four months to locate Jarman and an opportunity to explain the violation and offer any excuses that may be available, Liberty failed to provide excusable cause for Jarmon's failure to appear. Therefore, the trial court did not violate Jarmon's constitutional rights by issuing the bench warrant for his arrest or abuse its discretion by ordering the bond forfeited.

