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COURT OF APPEAL, CRIMINAL DIVISION (ENGLAND)

R v WILLIAMS (Roy)

Scarman and Shaw LJJ and Nield J

29 November 1976

[1978] QB 373; [1977] 2 WLR 400; [1977] 1 All ER 874; 64 Cr App R 106

PROCEDURE – CRIMINAL LAW – CASE ADJOURNED AND COURT RECORD SHOWED "PLEA NG" – WHEN MATTER CAME FOR HEARING DEFENDANT INTENDED TO PLEAD NOT GUILTY – NO PLEA TAKEN – DEFENDANT FOUND GUILTY – WHETHER A NULLITY.

HELD: Appeal dismissed.
Even though accused had not pleaded, waiver was to be implied, where he and his counsel were present, were aware of the charge, and proceeded to trial as if he had been duly arraigned, without objecting or in any manner calling to the attention of the court the fact that he had not been arraigned. While the omission of a formal arraignment was unfortunate and regrettable, it did not, in the peculiar circumstances of this case, have the result of vitiating the trial as such. It followed that the submission failed and that the appeal was dismissed.

THE COURT: The defendant appeared in court to answer a charge of handling stolen goods. After he had identified himself but before he had pleaded, counsel for the Crown asked the judge if the trial could be postponed. Counsel for the defence then consented and the judge adjourned the trial. The clerk entered in the court record 'adjourned to date to be fixed. Plea N.G.' When the case again came before the court, it came before a different judge, there was another clerk in court and different counsel appeared for the Crown and the defence. Without asking the defendant to plead, the trial proceeded and the jury returned a verdict of guilty.

The defendant heard the indictment read out. He heard also the statement that he had pleaded not guilty to it. No one present, other than the defendant himself, could have known that the assertion that he had pleaded not guilty out of his own mouth was not in accord with the facts. However the defendant made no demur. After all it was his intention and desire to enter a plea of not guilty to the charge and to be tried by the jury.

The proceedings continued as a normal trial. The outcome was that the jury returned a verdict of guilty, and the defendant was sentenced to a term of imprisonment.

As a question of law, namely, were the proceedings which resulted in the defendant's conviction a mistrial and a nullity, in that he had never been called upon to plead. It is incumbent on this court to consider and to seek to resolve the legalities in the light of the defective procedure which was inadvertently followed.

The dire consequences of non-observance of the ritual in pleading not guilty no longer threaten a person accused in an indictment. Insistence on an express plea of not guilty by the defendant himself is no longer a necessary safeguard of justice where that is the intended plea and where the ensuing proceedings are precisely what they would have been if the accused had himself made the plea in plain terms.

Roscoe's Criminal Evidence, 16th ed. (1952), p242, where arraignment is dealt with as coming within the proceedings 'before trial.' The author states: At paragraph 408, which is headed 'Waiver of Arraignment and Plea and defects Therein,' is the statement:

> 'The modern trend is that arraignment, and even the plea, may be waived in criminal cases...Waiver may be express or by conduct, as where accused, without objection, proceeds to trial as if he had been duly arraigned. Irregularities in connection with arraignment and plea may be similarly waived.'

Thus even though accused has not pleaded, waiver will be implied, where he and his counsel were present, were aware of the charge, and proceeded to trial as if he had been duly arraigned, without objecting or in any manner calling to the attention of the court the fact that he had not been arraigned.

In the judgment of this court, while the omission of a formal arraignment was unfortunate and regrettable, it did not, in the peculiar circumstances of this case, have the result of vitiating the trial as such. It follows that the submission fails and that the appeal is dismissed.
