

COURT OF APPEALS OF VIRGINIA

Present: Judges Benton, Elder and Overton
Argued at Richmond, Virginia

EARL BOBBY WALKER

v. Record No. 1220-96-4

COMMONWEALTH OF VIRGINIA

MEMORANDUM OPINION* BY
JUDGE NELSON T. OVERTON
JUNE 24, 1997

FROM THE CIRCUIT COURT OF CULPEPER COUNTY
John R. Cullen, Judge

V. R. Shackelford, III (Shackelford,
Honenberger, Thomas, Willis & Gregg, P.L.C.,
on brief), for appellant.

Kathleen B. Martin, Assistant Attorney
General (James S. Gilmore, III, Attorney
General, on brief), for appellee.

Earl Bobby Walker was charged with attempted capital murder and convicted by a jury of the lesser-included offense of assault and battery. He appeals this conviction on the ground that he was never arraigned on the indictment. We reverse and remand.

The parties are fully conversant with the record in the cause, and because this memorandum opinion carries no precedential value, no recitation of the facts is necessary.

Walker was indicted for abduction, rape, sodomy, and attempted capital murder. Due to a series of continuances and pretrial motions, Walker's arraignment on the attempted capital murder charge was inadvertently omitted. At trial, Walker was

*Pursuant to Code § 17-116.010 this opinion is not designated for publication.

tried on all four indictments, including attempted capital murder. He had not been arraigned and had not entered a plea.

"[U]pon a trial of any felony, there must be a plea by the defendant." Crutchfield v. Commonwealth, 187 Va. 291, 296, 46 S.E.2d 340, 342 (1948). The accused must have the charge read to him in open court and be asked to make a plea on that charge. See Code § 19.2-254. If the defendant will not enter a plea, the court must enter a plea of not guilty before the trial may commence. See Code § 19.2-259. "Without a plea entered in person by the accused, or by the court, there can be no trial of a felony charge." Roach v. Commonwealth, 157 Va. 954, 960, 162 S.E. 50, 52 (1932). This requirement is "jurisdictional in nature in the sense that without such a plea, 'there can be no trial of a felony charge.'" Cassidy v. Commonwealth, 210 Va. 80, 82, 168 S.E. 125, 126 (1969) (quoting Roach, 157 Va. at 960, 162 S.E. at 52).

Walker was never arraigned and never entered a plea for attempted capital murder. Without a plea, the trial for attempted capital murder could not occur and was a nullity. His conviction resulting from that charge must be reversed.

We reverse the conviction for assault and battery and remand for further proceedings if the Commonwealth be so advised.

Reversed and remanded.