

3227.

JUSTICE OF PEACE — WHEN PERSON CHARGED WITH MISDEMEANOR, ENTERS PLEA “NOT GUILTY”, WAIVES JURY TRIAL, REQUESTS TRIAL IN HIS ABSENCE, IN WRITING SUBSCRIBED BY HIM, JUSTICE MAY ASSUME JURISDICTION, TRY ABSENT PERSON AND ISSUE FINAL JUDGMENT.

SYLLABUS:

When a person charged with a misdemeanor before a justice of the peace, after entering a plea of “not guilty”, waives trial by jury and requests to be tried in his absence in a writing subscribed by him, the justice of the peace may thereupon assume jurisdiction, try such person in his absence and render final judgment in the cause.

Columbus, Ohio, January 8, 1941.

Hon. Ralph J. Bartlett, Prosecuting Attorney,
Columbus, Ohio.

Dear Sir:

This will acknowledge receipt of your request for my opinion which reads as follows:

“‘A’ who is a resident of Akron, Ohio, was arrested on a charge of speeding by a constable in Sharon Township, Franklin County, Ohio. He was permitted by the Justice of the Peace to proceed to his destination upon his promise to appear when the case was set for trial. ‘A’ has now requested that the Justice of Peace permit him to sign a waiver of a Jury trial and consent in writing to the trial of the cause in his absence.

The question that has been raised is:

Does a Justice of the Peace, in the absence of a statute conferring such power, have authority to try a person charged with a criminal violation when the person is not present in court?”

While your request does not so state, it shall be assumed that the specific criminal act charged in the situation you present is the alleged violation of Section 12603, et seq., General Code, regarding speed regulations for motor vehicles.

This section provides in part, as follows:

“Any person who violates the provisions of this section shall be deemed guilty of a misdemeanor * * * .”

Section 13433-10, General Code, setting forth the procedure before a magistrate when there is no plea of guilty, reads as follows:

“When the accused is brought before the magistrate and there is no plea of guilty, he shall inquire into the complaint in the presence of such accused. If it appear that an offense has been committed, and there is probable cause to believe the accused guilty, he shall order him to enter into a recognizance with good and sufficient surety, in such amount as he deems reasonable, for his appearance at a proper time and before the proper court, otherwise, he shall discharge him from custody. If the offense charged is a misdemeanor, and the accused in a writing subscribed by him and filed before or during the examination, waive a jury and submit to be tried by the magistrate, he may render final judgment.”

Since the offense charged is a misdemeanor, together with the fact that the accused proposes to sign a waiver of jury trial and further consents to be tried by the magistrate, the provisions of Section 13433-10, *supra*, would appear to grant jurisdiction to the magistrate to render final judgment.

In connection with the right of a person to be present at a hearing wherein he stands accused and is on trial for a criminal offense, it is provided in the Bill of Rights, Article I, Section 10 of the Constitution of Ohio, as follows:

“ * * * In any trial, in any court, the party accused shall be allowed to appear and defend in person and with counsel: to demand the nature and cause of the accusation against him, and to have a copy thereof; to meet the witnesses face to face, and to have compulsory process to procure the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury of the county in which the offense is alleged to have been committed; * * * ”

The question now arises as to whether an accused can waive the right granted under Article I, Section 10, *supra*, and whether if an accused should waive such privilege the Court before whom it was waived would have authority to proceed to conduct the trial to conclusion and final judgment without the accused being present.

Upon the subject of the right of one accused of a crime to waive his right of presence at trial, it is stated in Vol. 14, Am. Jur., page 906, Section 199, as follows:

“It is clear that the accused may waive any trial at all, for

he may plead guilty and thus subject himself to the severest penalty which might follow a trial. Since he can do this, he may waive any mere privilege on the trial that is designed only to aid him in shielding himself from such result. * * * ”

A question similar to the one you present was under consideration by one of my predecessors in Opinions of the Attorney General for the year 1925, page 467, wherein it is stated in the syllabus:

“A person arrested on an affidavit for a misdemeanor, filed in a mayor’s court, may, by a written waiver, waive his personal appearance to answer such charge and enter a plea of guilty upon which the mayor may assess a fine and proper costs as if the accused was present in open court, providing the court has final jurisdiction of the offense charged.”

In connection with the question here under consideration your attention is likewise directed to the provisions of Section 13442-10, General Code, which reads as follows:

“A person indicted for a misdemeanor, upon request in writing subscribed by him and entered in the journal, may be tried in his absence or by the court. No other person shall be tried unless personally present, but if a person indicted escape or forfeit his recognizance after the jury is sworn, the trial shall proceed and the verdict be received and recorded. If the offense charged is a misdemeanor, judgment and sentence shall be pronounced as if he were personally present, and if a felony, the case shall be continued until the accused appears in court, or is retaken.”

While the above section provides that “no other person shall be tried unless personally present”, I am nevertheless constrained to the view that a person charged in an affidavit with a misdemeanor and arrested on a warrant issued thereon may be tried in his absence by a justice of peace for the reason that the above provision refers only to such persons who have been indicted for a crime other than a misdemeanor.

Therefore, in specific answer to your question it is my opinion that when a person charged with a misdemeanor before a justice of the peace, after entering a plea of “not guilty,” waives trial by jury and requests to be tried in his absence in a writing subscribed by him, the justice of the peace may thereupon assume jurisdiction, try such person in his absence and render final judgment in the cause.

Respectfully,

THOMAS J. HERBERT,
Attorney General.