Brawley, Belk's, and Charging Crimes in Modern, Southern Style

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Belk Department Stores are the Bloomingdales of North Carolina. If someone says they are going to Belk (or, more often, "Belk's"), you know that they are heading into town to pick up some modern, southern style (or, more likely, something off the wedding registry). And if you hear that so-and-so stole something from your local Belk's, you can generally picture the scene of crime, since, outside of the big cities, there is generally just one Belk's in town. So when the court of appeals held last year that a Rowan County indictment alleging that the defendant stole shirts belonging to "Belk's Department Stores, an entity capable of owning property," was invalid because it failed to adequately identify the victim of the larceny, it may have left some people in Salisbury (where there is only one Belk's) scratching their heads.

The state supreme court recently reversed that determination in a per curiam opinion that rejected this kind of technical pleading requirement for larceny of personal property.

***State v. Brawley*, ___N.C. App. ___, 807 S.E.2d 159 (2018).** Jeff wrote here about the court of appeals' decision in *State v. Brawley*. That court rejected the State's argument that the indictment's reference to Belk's Department Stores as "an entity capable of owning property," was sufficient to compensate for its failure to specify the nature of the entity by stating that it was a corporation, partnership, or some other type of legal entity. The majority reasoned that it was "*possible* for there to be a 'Belk's Department Stores, a corporation' and, at the same time, a 'Belk's Department Stores, a limited partnership.'" In such a circumstance, alleging that the property belonged to Belk's Department Stores would not identify which of these two entities was in fact the owner. Moreover, the court of appeals construed precedent as requiring that an indictment charging larceny of personal property from a victim other than a natural person specify the victim's entity type.

Judge Arrowood dissented. He reasoned that alleging a store name, and alleging that the store is a legal entity capable of owning property, satisfies the requirement that a criminal proceeding contain "'[a] plain and concise factual statement in each count, which . . . asserts facts supporting every element of a criminal offense and the defendant's commission thereof with sufficient precision clearly to apprise the defendant . . . of the conduct which is the subject of the accusation.'" 807 S.E.2d 159, 164 (Arrowood, J., dissenting) (quoting G.S. 15A-924(5)).

The dissent noted that the state supreme court in *State v. Campbell*, 368 N.C. 83 (2015) upheld the validity of an indictment that alleged that the defendant stole personal property belonging to "Manna Baptist Church" without stating that the church was an entity capable of owing property. *Campbell* held that a larceny indictment must allege that the stolen property was owned by a natural person or a legal entity capable of owning or holding property and that alleging that property was owned by an entity identified as a church or place of religious worship satisfied that requirement. The *Brawley* dissent explained that "[g]iven the complexity of corporate structures in today's society . . . an allegation that the merchant named in the indictment is a legal entity capable of owning property is sufficient to meet the requirements that an indictment apprise the defendant of the conduct which is the subject of the accusation." 807 S.E.2d at 164 (Arrowood, J., dissenting). The dissent's point about the complexity of corporate structures is bolstered by the sheer number of corporate entities associated with Belk. Type Belk into the company search page on the North Carolina Secretary of State's website and check out the results.

The State appealed from the divided decision.

***State v. Brawley*, ___ N.C. ___, 811 S.E.2d 144 (April 6, 2018).** The North Carolina Supreme Court, in a per curiam opinion, reversed "for the reasons stated in the dissenting opinion."

What does this mean for future indictments?

Brawley is good news for the State, which charges thousands of larceny of personal property cases each year. Post-*Brawley*, an indictment alleging that items were stolen from a named store need not specify the corporate structure of the named store so long as it states that the store is an entity capable of owning property. This is welcome news for prosecutors charging the theft of property from entities whose corporate structure may be difficult to ascertain.

Brawley does not address whether misstating or misspelling the name of an entity-victim will render an indictment invalid. Other cases demonstrate that the impact of such an error varies depending upon the materiality of the misstatement. *Compare State v. Williams*, 241 N.C. App. 174 (2015) (unpublished) (omission of the word "Road" from the name of the school PTA from which defendant was alleged to have embezzled money did not create fatal variance from proof at trial); *State v. Pender*, 243 N.C. App. 142 (2015) (no fatal variance from indictment naming victim as "Vera Alston" rather than "Vera Pierson" when victim was defendant's mother-in-law and there was "no uncertainty" about the identity of the person the defendant was alleged to have kidnapped and assaulted); *State v. Staley*, 71 N.C. App. 286 (1984) (no fatal variance between indictment and proof where indictment charged defendant with murder of Raleigh Edward Mortez, whereas the evidence showed the decedent's correct name was Raleigh Edward Moretz; defendant "well understood that he was being tried for the murder of his father-in-law, Raleigh Edward Moretz") *with State v. Bell*, 270 N.C. 25 (1967) (fatal variance existed when indictment charged defendant with robbing "Jean Rogers" and the evidence at trial showed that the victim was "Susan Rogers"); *State v. Overman*, 257 N.C. 464 (1962) (fatal variance existed between the indictment and the evidence when the indictment charged that the defendant left the scene of an accident in which Frank E. Nutley was injured but the evidence at trial established that the person injured was Frank E. Hatley).

The safest course of action for the State is, of course, to use the precise legal name for the property-owning entity when it can do so. But the ability to allege that an entity-victim is capable of owning property is helpful when the State is unsure of the entity's business structure, omits mention of its status, or errs in describing it.

Part of a larger trend. *Brawley* is one of a series of recent state supreme court opinions rejecting technical pleading requirements for indictments that otherwise satisfy statutory requirements by stating the elements of the offense and by providing a defendant reasonable notice of the charge. In *State v. Mostafavi*, ___ N.C. ___, 811 S.E.2d 138 (2018), for example, the state supreme court rejected the defendant's argument that the indictment charging him with obtaining property by false pretenses was fatally flawed because it described the property obtained as "United States Currency" but did not specify the amount of money obtained. The indictment, which alleged that the defendant pawned "AN ACER LAPTOP, A VIZIO TELEVISION AND A COMPUTER MONITOR" as well as "JEWELRY" as his own property, obtaining "UNITED STATES CURRENCY from CASH NOW PAWN" in return was, the court held, sufficient to identify the specific transactions at issue. The indictment did not need to state the amount of money obtained because it adequately advised the defendant of the conduct that gave rise to the charges. Other recent cases have upheld indictments with alleged technical defects based on similar reasoning. *See, e.g.*, *State v. Spivey*, 368 N.C. 739 (2016) (indictment alleging that the defendant injured real property identified as the "front patio, façade, and porch of the restaurant, the property of Katy's Great Eats," was sufficient to identify the specific parcel of real property injured even though Katy's' Great Eats was not identified by its proper legal name: "Katy's Great Eats, Inc."); *State v. Campbell*, 368 N.C. 83 (2015) (larceny indictment alleging that the stolen property belong to a church was not fatally flawed for failing to state that the church was an entity capable of owning property).

Does *Brawley* impact citations? Misdemeanor larceny is an offense frequently charged by citation. (Brawley's theft of two shirts worth $135 was a felony because he stole the shirts from a merchant and removed the anti-theft devices

that were attached to the shirts. *See* G.S. 14-72.11(2).) Because the pleading requirements for citations are less stringent than those for other types of pleadings, including indictments, the failure to specify the nature of the entity victim likely did not render a citation for misdemeanor larceny insufficient, even before the state supreme court decided *Brawley*. *See, e.g.*, *State v. Jones*, ___ N.C. App. ___, 805 S.E.2d 701 (2017) (open container citation that cited G.S. 20-138.7(a) and stated that the defendant had an open container of alcohol after drinking was sufficient to apprise defendant of the charges against him and confer jurisdiction on district court notwithstanding its failure to allege that defendant drove a motor vehicle while on a public street or highway, an element of the offense); *State v. Allen*, ___ N.C. App. ___, 783 S.E.2d 799 (2016) (citation for transporting an open container of fortified wine or spirituous liquor while operating a motor vehicle that failed to allege that the open container was transported in the passenger area of defendant's vehicle, an element of the offense, was not fatally defective as it sufficiently identified the crime charged).