Changing Charges after State v. Bryant

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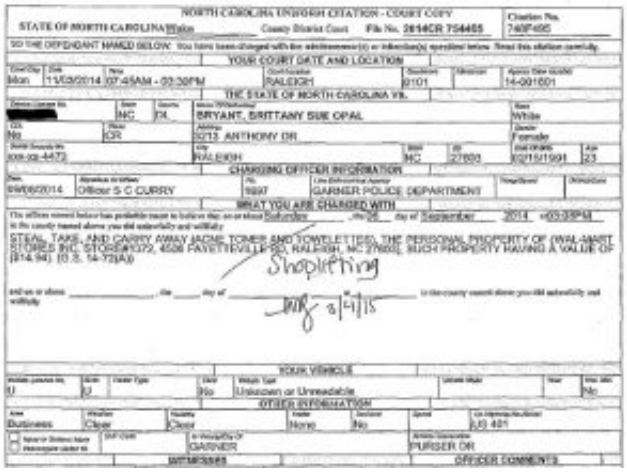
Brittany Bryant was charged with misdemeanor larceny for allegedly stealing acne toner and towelettes valued at $14.94 of from a Wal-Mart in Raleigh. The prosecutor agreed to reduce the charge from larceny to shoplifting. She accomplished that in a manner familiar to district court practitioners. She struck through the charging language of the citation, wrote in "shoplifting," and initialed and dated the document. Bryant then pled guilty to shoplifting by concealing merchandise and was sentenced.


NORTH CAROLINA UNIFORM CITATION - COURT COPY

STATE OF NORTH CAROLINA Wake County District Court File No. 14CR 704465

TO THE DEFENDANT NAMED BELOW: You have been charged with the offense(s) or infraction(s) described below. Read this citation carefully.

YOUR COURT DATE AND LOCATION

Mon 11/03/2014 07:45AM - 03:30PM RALEIGH 0101 14-001601

THE STATE OF NORTH CAROLINA VS.

NC BRYANT, BRITTANY SUE OPAL White

No DR 5213 ANTHONY DR Female

RALEIGH NC 27603 03/15/1991 23

CHARGING OFFICER INFORMATION

09/06/2014 Officer S C CURRY 9307 GARNER POLICE DEPARTMENT

WHAT YOU ARE CHARGED WITH

STEAL, TAKE, AND CARRY AWAY (ACNE TONER AND TOWELETTES), THE PERSONAL PROPERTY OF (WAL-MART STORES INC STORE#1072, 4508 FAYETTEVILLE RD, RALEIGH, NC 27610), SUCH PROPERTY HAVING A VALUE OF ($14.94). (G.S. 14-72(A))

Shoplifting

YOUR VEHICLE

Unknown or Unreadable

OFFICER INFORMATION

Business Clear Clear None No

GARNER PURSER DR

WITNESSES OFFICER COMMENTS

Bryant later sought to set aside her conviction on the basis that the prosecutor improperly amended the citation. The court of appeals agreed, holding in State v. Bryant, ___ N.C. App. ___ (October 1, 2019), that the amendment was improper and deprived the district court of jurisdiction.

Bryant has left many wondering how misdemeanor charges may be amended to charge different, and less serious, offenses without subjecting the convictions to collateral attack.

The court's reasoning. G.S. 15A-922(f) allows citations (and other pleadings in misdemeanor cases) to be amended when they do not change the nature of the offense charged. Amendments that change a pleading to charge a different offense, in contrast, are not permissible. *See, e.g.*, *State v. Carlton*, 232 N.C. App. 62 (2014) (finding that improper amendment of the citation to charge the defendant with a different crime deprived the superior court of jurisdiction over the charges).

Because larceny and shoplifting are separate statutory offenses requiring proof of different elements, the court reasoned that the amendment was not permissible. The impermissible amendment deprived the district court of jurisdiction to enter judgment against the defendant.

That reasoning seems pretty straightforward. So why did the prosecutor in *Bryant* and many other prosecutors in similar cases view this kind of change as permissible?

A prosecutor may file a statement of charges any time before arraignment in district court. G.S. 15A-922. A statement of charges is a criminal pleading charging a misdemeanor that is signed by a prosecutor. It supersedes all previous pleadings of the State and may charge the same offenses as a previously issued citation or additional or different offenses. G.S. 15A-922(d).

Many people (including me) viewed the district attorney's amendment of charges stated on the citation by striking through the original language, adding new language, and signing, as procedurally akin to the filing of a statement of charges. *Bryant* indicates there must be something more.

What is the something more? What if prosecutors had a stamp for "misdemeanor statement of charges" that they could apply to a citation they wished to change? Would that transform the document from an amended citation to a misdemeanor statement of charges?

Or must prosecutors write out new charges on a form especially designated for this purpose? *See* AOC-CR-120. If the latter option is favored, can that feasibly take place in district court? If not, has *Bryant* won her battle but lost the war for future criminal defendants who seek to plead to different and less serious charges?

I have many questions and few answers after *Bryant*. Readers, please chime in and share your thoughts.