

State v. Brice: Pleading Rules for Habitual Offenses Are Not Jurisdictional

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Date : November 15, 2017

The court of appeals last year [vacated Sandra Brice's conviction](#) for [habitual misdemeanor larceny](#) for stealing five packs of steaks valued at \$70 from a Food Lion in Hickory. The reason? The indictment alleged the steak theft and Brice's four prior convictions for misdemeanor larceny in a single count. That violated a [statutory rule](#) requiring that [prior convictions be alleged in a separate count](#), and, in the court of appeals' view, deprived the superior court of jurisdiction to enter judgment against Brice for habitual misdemeanor larceny, a felony offense. Earlier this month, the North Carolina Supreme Court [reversed the court of appeals](#) and remanded the case for reinstatement of the trial court's judgment. Read on to find out why.

First, the court of appeals. The court of appeals panel that unanimously reversed Brice's conviction viewed its earlier decision in [State v. Williams](#), 153 N.C. App. 192 (2002), as controlling. *Williams* held that the trial court lacked jurisdiction to sentence the defendant for habitual misdemeanor assault based on an indictment that alleged misdemeanor [assault on a female](#) and the existence of two or more prior assault convictions but failed to specifically allege the felony of [habitual misdemeanor assault](#).

Then discretionary review. Following the court of appeals' decision in *Brice*, the State sought discretionary review before the supreme court, arguing that bills of indictment should not be vitiated for technicalities that do not affect the merits of the case. Moreover, the State argued that if noncompliance with G.S. 15A-928 was indeed a jurisdictional defect, the trial court also lacked jurisdiction to sentence the defendant for the underlying misdemeanor.

The state supreme court granted review and, as previously, mentioned reversed the court of appeals.

N.C. Supreme Court's analysis. The court examined the text of [G.S. 15A-928](#)(a) and (b), which impose the following requirements:

- When the fact that a defendant has been previously convicted of an offense raises an offense to a higher grade and thereby becomes an element of the latter offense, an indictment or information for the enhanced offense may not allege the previous conviction.
- The name or title of the offense used in in the indictment or information to refer to the offense may not contain a reference to a previous conviction.
- An indictment or information for the enhanced offense must be accompanied by a special indictment or information, filed with the principal pleading that charges the prior conviction(s). Alternatively, the special indictment or information may be incorporated in the principal indictment as a separate count.

- The State may not refer to the special indictment or information during trial nor adduce evidence of a prior conviction alleged therein except as otherwise permitted in G.S. 15A-928(c) (allowing evidence of a prior conviction when a defendant denies the conviction or remains silent).

The court considered the legislature's purpose for imposing these requirements, which it deemed to be two-fold. First, the provisions ensure that a defendant: (a) is informed of the prior convictions upon which the State intends to rely at trial; (b) has a fair opportunity to admit or deny the prior convictions; and (c) understands that he or she is subject to harsher sentencing for the recidivist version of the offense. Second, the statute requires that the prior convictions be stated in an altogether separate pleading or a separate count of a single pleading so that evidence about a prior conviction will not be introduced before the jury in a case in which the defendant has admitted to the prior conviction.

Though providing notice to a defendant is a jurisdictional concern, the court opined that a defendant obtains sufficient notice of charges when the State adheres to the pleading requirements in [G.S. 15A-924](#) regardless of whether it also follows the rules in G.S. 15A-928. As for the second purpose, the court noted that strict compliance with G.S. 15A-928 is not necessary to ensure that a jury does not learn of a defendant's prior convictions, as evidenced by the events in Brice's trial. Brice was separately arraigned on the allegations that she had four previous convictions for misdemeanor larceny. She admitted to the prior convictions, and no evidence of them was introduced before the jury.

Holding. The state supreme court thus concluded that the State's failure to comply with the separate indictment or separate count provisions in G.S. 15A-928 was not a jurisdictional issue that the defendant could raise on appeal without having objected or otherwise sought relief on that basis from the trial court. Instead, this is the sort of claim that must be raised by a defendant and preserved for appellate review. Because Brice did not raise this claim before the trial court, the court held that she was not entitled seek relief for that deficiency on appeal. The court then explicitly overruled *Williams*.

My two cents. Reversing Brice's conviction for the State's failure to place a numeral 2 before the language averring her prior convictions did seem to place form over substance. As the supreme court noted, there was nothing in the record to suggest that Brice was not fully informed of the charges or that evidence of her prior convictions was impermissibly introduced to the jury.

Moreover, given that jurors in criminal trials in North Carolina never receive a copy or have [read to them](#) the contents of the indictment, I don't fully understand the rationale for the separate pleading requirement in G.S. 15A-928(b). Perhaps it serves to remind the trial court of its obligation to prevent evidence of these matters from coming before the jury except in the manner sanctioned by statute. Of course, whether I understand it or not, it remains the law. Prosecutors would be well-advised to comply with these pleading requirements to avoid having to make amendments or seek a new indictment upon a defendant's timely objection.