



Technical Assistance Practice Advisory
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Charging Documents

There are two types of charging documents that can initiate misdemeanor proceedings: complaints and citations. State v. Leach, 113 Wash.2d 679, 694, 782 P.2d 552, 559 (1989). A prosecutor issues a complaint, and a police officer issues a citation.

CITATION

An officer may issue a citation and initiate proceedings only for misdemeanors for which the officer arrests, or could arrest, the defendant. CrRLJ 2.1(b)(1). Requirements for citations are more relaxed than those for complaints. CrRLJ 2.1(b)(3) lists the required contents of a citation. Unlike a complaint, “[a]bsent prejudice to substantial rights of the defendant, a citation will not be considered insufficient if it does not contain a definite statement of the essential facts constituting the offense charged.” Leach, 113 Wash.2d at 694. However, to meet constitutional requirements, misdemeanor citations must “apprise defendants with reasonable certainty of the nature of the accusations against them.” Id. at 697-99 (“DWI” and municipal code citation adequately described the offense of driving while intoxicated).

COMPLAINT

“An accused must be informed of the charge he is to meet at trial and cannot be tried for an offense not charged.” State v. Carr, 97 Wash.2d 436, 439, 645 P.2d 1098, 1100 (1982) (citing Washington Constitution, art. I, sec. 22.¹ “[T]he charging document must allege sufficient *facts* to support every element of the crime charged.” Leach, 113 Wash.2d at 688 (emphasis in original). A charging document that omits an element of a charged offense violates the defendant’s constitutional rights. Leach, 113 Wn.2d at 687. “If a misdemeanor citation or complaint omits a statutory element of the charged offense, the document is constitutionally defective for failure to state an offense. . . .” Leach, 113 Wash.2d at 687. The Washington Supreme Court has held that a complaint must include all essential elements of an offense, whether statutory or common law.

[A]ll essential elements of an alleged crime must be included in the charging document in order to afford the accused notice of the nature of the allegations so that a defense can be properly prepared. . . .

¹ “In criminal prosecutions the accused shall have the right ... to demand the nature and cause of the accusation against him, to have a copy thereof,”

State v. Kjorsvik, 117 Wash.2d 93, 101-102, 812 P.2d 86, 90 (1991) (emphasis in original).

PREJUDICE

A constitutional violation related to a citation or complaint requires an incomplete or defective charging document that prejudiced the defendant's substantial rights. "Technical defects not affecting the substance of the charged offense do not prejudice the defendant. . . ." Leach, 113 Wash.2d at 696.

NAMES IN A CHARGING DOCUMENT

The names of the parties are a required and important part of a charging document:

[T]he information must state the acts constituting the offense in ordinary and concise language, not the name of the offense, but the statement of the acts constituting the offense is just as important and essential as the other requirements of the information, such as the title of the action and the names of the parties.

Leach, 113 Wash.2d at 689 (quoting State v. Royse, 66 Wash.2d 552, 557, 403 P.2d 838 (1965)).

The Washington Court of Appeals has held that an amended charging document that erroneously named the arresting officer as the party to whom the defendant made a drug delivery was merely a technical error and required no remedy on appeal. State v. Garcia, 65 Wash.App. 681, 829 P.2d 241 (1992). However, the Court of Appeals limited its holding in Garcia to the "peculiar facts of this case" and said that not "every error in which a wrong name is used a technical one." Garcia, 65 Wash.App. at 686-87. The court in Garcia stressed that the defendant had received notice of the correct party to whom he had allegedly delivered drugs in the certification for probable cause and that both parties tried the case as though the information were correct. In fact, neither party "relied upon or even noticed" the error in the information prior to trial. Garcia, 65 Wash.App. at 686-87.

AMENDMENT

A prosecutor may not amend a charging document to allege a new crime at the start of or during trial. Carr, 97 Wash.2d at 440. See also State v. Baldwin, 63 Wn.App. 536, 821 P.2d 496 (1991) (State may not amend an information after presenting its case in chief unless the amendment charges a lesser degree of the same offense or charges a lesser included offense). However, CrRLJ 2.4(f) allows the prosecutor to make an amendment that does not prejudice the defendant at any time. See State v. Johnson, 119 Wash.2d 143, 150, 829 P.2d 1078, 1081 (1992) (citing State v. Pelkey, 109 Wash.2d 484, 490, 745 P.2d 854 (1987)) ("[a]mendments are liberally allowed, with

continuances granted to a defendant if necessary to prepare to meet the altered charge”).

REMEDY

The remedy for a constitutionally defective charging document is dismissal without prejudice. “Dismissal without prejudice has been the consistent remedy imposed for reversible error based on an improper charging document.” State v. Vangerpen, 125 Wash.2d 782, 793, 888 P.2d 1177, 1183 (1995).

If a defendant challenges a charging document pre-trial, the trial court must “construe the charging language strictly.” Johnson, 119 Wash.2d at 149-50. Additionally, a defendant challenging a charging document pre-trial need not show prejudice. Id.

If a defendant challenges a charging document after he has received a verdict, the court will apply a two-part test:

(1) do the necessary facts appear in any form, or by fair construction can they be found, in the charging document; and, if so, (2) can the defendant show that he or she was nonetheless actually prejudiced by the inartful language which caused a lack of notice?

Kjorsvik, 117 Wash.2d at 105-106.

If a charging document is merely vague, the defendant’s remedy is to request a bill of particulars:

[A] charging document which states the statutory elements of a crime, but is vague as to some other significant matter, may be corrected under a bill of particulars. A defendant may not challenge a charging document for “vagueness” on appeal if no bill of particulars was requested at trial.

Leach, 113 Wash.2d at 686-87.