

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

NO. COA13-309
NORTH CAROLINA COURT OF APPEALS

Filed: 15 October 2013

STATE OF NORTH CAROLINA

v.

Forsyth County
No. 11 CRS 26774

JASMINE ANTOINETTE LEWIS

Appeal by defendant from judgment entered 2 November 2012 by Judge Ronald E. Spivey in Forsyth County Superior Court. Heard in the Court of Appeals 7 October 2013.

Attorney General Roy Cooper, by Assistant Attorney General James C. Holloway, for the State.

Yoder Law PLLC, by Jason Christopher Yoder, for defendant-appellant.

BRYANT, Judge.

Defendant Jasmine Antoinette Lewis appeals from a judgment entered upon a jury verdict in Forsyth County Superior Court finding her guilty of misdemeanor larceny. Defendant argues on appeal that the trial court erred in allowing the State to amend the citation charging her with misdemeanor larceny, and lacked jurisdiction over her case because the citation was fatally

defective. Because the State properly amended the citation prior to trial, we hold the trial court had jurisdiction to hear this case.

Defendant is correct that the initial citation¹ charging her with misdemeanor larceny was fatally defective. The citation listed the owner of the property as "Sally Beauty," which is not a natural person, and does not give any indication that Sally Beauty is a corporation or other entity capable of owning property. See *State v. Thompson*, 6 N.C. App. 64, 66, 169 S.E.2d 241, 242 (1969). Recognizing this defect, the State filed a written motion to amend the citation, asking the trial court "for an order amending the citation to amend 'Sally Beauty' to 'Sally Beauty Holdings, Inc.'" The trial court allowed the amendment prior to the start of the trial.

Defendant contends the trial court erred in allowing the amendment because it changed the nature of the crime charged. See N.C. Gen. Stat. § 15A-922(f) (2011) ("A statement of charges, criminal summons, warrant for arrest, citation, or magistrate's order may be amended at any time prior to or after

¹ The citation alleged that defendant "[stole], [took], and carr[ied] away without the consent of the possessor and with the intent to deprive the possessor of its use permanently, knowing that [she] was not entitled to it (body lotion) such property having a value of (est. \$30.00) such property belonging to (Sally Beauty)."

final judgment when the amendment does not change the nature of the offense charged.”). However, in *State v. Reeves*, this Court held that amending at trial an arrest warrant charging misdemeanor larceny “to change the owner of the property taken does not change the nature of the offense charged.” *State v. Reeves*, 62 N.C. App. 219, 224, 302 S.E.2d 658, 661 (1983). While defendant was charged with misdemeanor larceny by citation in this case, rather than by an arrest warrant as in *Reeves*, General Statutes, section 15A-922(f) makes no distinction between an arrest warrant and a citation. Accordingly, we hold the trial court did not err in allowing the State to amend the citation to change the owner of the stolen property.

Defendant also argues that even if the trial court did not err in allowing the State’s motion to amend the citation, no actual amendment was ever made to the citation, and thus the court still lacked jurisdiction over her case. It is well established that where “neither the motion nor the order set out the contemplated wording of the proposed amendments, the order allowing the motion to amend [is] not self-executing.” *State v. Thorne*, 238 N.C. 392, 396, 78 S.E.2d 140, 142 (1953). Here, however, the State’s motion set out the contemplated wording of the proposed amendment and the trial court’s order allowing the

motion to amend was self-executing. Accordingly, we hold the defendant was tried upon a citation properly charging her with misdemeanor larceny from Sally Beauty Holdings, Inc., and the trial court had jurisdiction over her case.

No error.

Judges HUNTER, Robert C., and McCULLOUGH concur.

Report per Rule 30(e).