

## Misdemeanor Pleadings and Related Issues

A criminal pleading performs three main functions. It must:

- provide adequate notice of the charges so that the defendant is able to prepare a defense;
- enable the defendant to raise a double jeopardy bar to a subsequent prosecution for the same offense; and
- provide the court with jurisdiction to enter judgment on the offense charged.

These requirements apply to all pleadings, not just indictments. *See* U.S. CONST. amend. VI (right to be informed of nature and cause of accusation); N.C. CONST. art. 1, § 23 (right to be informed of accusation); *Hamling v. United States*, 418 U.S. 87, 94 S. Ct. 2887, 41 L. Ed. 2d 590 (1974) (stating these requirements); *Russell, v. United States*, 369 U.S. 749, 82 S. Ct. 1038, 8 L. Ed. 2d 240 (1962) (conviction reversed for failure of indictment to satisfy first and third of pleading functions, above); *State v. Palmer*, 293 N.C. 633, 239 S.E.2d 406 (1977) (stating these requirements for indictments and for warrants).

### I. Misdemeanors Tried in District Court

#### A. Process as Pleading

The criminal process issued to the defendant—that is, the citation, magistrate’s order, criminal summons, or arrest warrant—doubles as the criminal pleading in a misdemeanor case in district court. *See* G.S. 15A-922(a).

**Citation.** The principal difference between a citation and other forms of process is that a law-enforcement officer, not a judicial official, issues it. An officer may issue a citation for any misdemeanor or infraction for which the officer has probable cause. *See* G.S. 15A-302(b). An officer may arrest a person for a misdemeanor [if grounds exist for a warrantless arrest under G.S. 15A-401(b)], but has no authority to arrest for an infraction. *See* G.S. 15A-1113; ROBERT L. FARB, ARREST, SEARCH, AND INVESTIGATION IN NORTH CAROLINA 56 (Institute of Government, 2d ed. 1992). Further, a person may not be arrested for failing to appear in court on an infraction charged in a citation. Instead, the judge must issue a criminal summons. *See* G.S. 15A-1116(b); *see also* G.S. 15A-302 official commentary (since citation is issued by officer and not judicial official, failure to appear is not contempt of court).

Under G.S. 15A-922(c), the defendant has the right to object to being tried on a citation. Regardless of whether the citation is properly drafted, the prosecution would have to prepare a separate pleading (usually, a statement of charges). If the defendant objects to being tried on a citation, however, the prosecution may have an opportunity to add new charges in the statement of charges. If the defendant wants to object to being tried on a citation, he or she must do so in district court; the objection apparently may not be raised for the first time in superior court on a trial de novo. *See State v. Monroe*, 57 N.C. App. 597, 292 S.E.2d 21 (1982).

**Magistrate's Order.** A magistrate's order usually is used when a person has been arrested without a warrant. A magistrate may issue it for any criminal offense, felony or misdemeanor, for which the magistrate finds probable cause. *See* G.S. 15A-511(c). For example, if an officer issues a person a citation for a misdemeanor and arrests the person, the magistrate may convert the citation into a magistrate's order by signing the citation, or he or she may prepare a separate magistrate's order on a form similar to an arrest warrant.

**Criminal Summons.** A judicial official may issue a criminal summons for any criminal offense or infraction for which probable cause exists. A summons may charge a felony, but it is typically used only for misdemeanors. If a judicial official issues a summons, the person is not taken into custody or placed under pretrial release conditions; he or she is just directed to appear in court. The statutes express a preference for use of a summons over an arrest warrant, but local practices vary. *See* G.S. 15A-304(b) and G.S. 15A-303 official commentary (expressing preference for summons when circumstances do not necessitate taking person into custody).

**Arrest Warrant.** A judicial official may issue an arrest warrant for any criminal offense supported by probable cause when the person has not been taken into custody previously for the charge. *See* G.S. 15A-304. A magistrate sometimes will issue an arrest warrant instead of a magistrate's order when a person has been arrested without a warrant. Although technically improper (since the person already is under arrest), the error is probably inconsequential.

**Order for Arrest.** An order for arrest is the one form of criminal process not considered a criminal pleading. It can be issued in conjunction with a criminal pleading, as when a judge issues an order for arrest at the time of issuance of an indictment. *See* G.S. 15A-305 (listing functions of order for arrest). By itself, however, it does not charge a crime and is not a valid pleading.

## **B. Common Pleading Problems in District Court**

**Failure to Charge Offense.** Misdemeanor pleadings are subject to the general requirements for a valid pleading. Thus, a misdemeanor pleading must charge an offense in the manner required by G.S. 15A-924(a). That section requires, among other things, that the pleading allege the essential elements of the crime. *See* G.S. 15A-924(a)(5); *see also State v. Palmer*, 293 N.C. 633, 239 S.E.2d 406 (1977) (both indictments and

warrants must “allege lucidly and accurately all the essential elements of the offense endeavored to be charged”); *State v. Camp*, 59 N.C. App. 38, 295 S.E.2d 766 (1982) (stating these requirements for warrants). Examples of defects in charging language for different offenses are discussed in IV., below.

The defendant may move to dismiss “at any time” for failure to charge an offense. *See* G.S. 15A-952(d), -954(c). A motion to dismiss is the equivalent of a motion to quash under pre-15A practice. *See State v. Brown*, 81 N.C. App. 281, 343 S.E.2d 553 (1986). In district court, defense counsel should make this motion *at the time of or after arraignment*—that is, at or after the commencement of trial. On or after arraignment, the prosecutor may cure a defect (by statement of charges or amendment) only if there is no change in the nature of the offense charged. *See* I.C. and D., below. The court “must” dismiss unless the defect concerns a matter on which an amendment is allowable. *See* G.S. 15A-924(e). Amendment of a pleading that fails to charge an offense as required by G.S. 15A-924 could be viewed as an impermissible change in the nature of the offense.

**Duplicity.** A pleading may be challenged for duplicity if it contains more than one charge in a single count. This problem arises most often when an officer issues a Uniform Citation and the magistrate converts the citation into a magistrate’s order by signing it. A Uniform Citation contains two counts only. The first count (numbers 1 through 14 on the citation) may be used to charge one offense; the second count (number 15) likewise may charge one offense. If the citation charges more than one offense in either count, the defendant may require the state to elect a single offense alleged in the particular count. If the state fails to elect, the entire count may be dismissed. *See* G.S. 15A-924(b).

In district court, the defendant apparently may make this motion at the commencement of trial. *See* G.S. 15A-924(b) (duplicity motion must be “timely”); G.S. 15A-953 (motions in district court ordinarily should be made upon arraignment or during trial); *cf.* G.S. 15A-952(b)(6) (in superior court, certain motions addressed to pleadings must be made before arraignment).

**Variance.** Even if the pleading properly charges a crime, the proof may vary from the pleading. “The State’s proof must conform to the specific allegations contained in the indictment [or other pleading]. If the evidence fails to do so, it is insufficient to convict the defendant.” *State v. Pulliam*, 78 N.C. App. 129, 132, 336 S.E.2d 649, 652 (1985); *see also State v. Bruce*, 90 N.C.App. 547, 369 S.E.2d 95 (1988). A challenge to a variance between pleading and proof may be raised by a motion to dismiss for insufficient evidence at the close of the state’s evidence. Examples of fatal variances are discussed in IV., below.

**Effect of Successful Challenge.** Double jeopardy ordinarily does not bar a second trial when the court dismisses a charge on the ground that the pleading is defective; the state may refile the charges in a proper pleading. *See, e.g., State v. Goforth*, 65 N.C. App. 302, 309 S.E.2d 488 (1983). As a practical matter, however, a successful motion to dismiss for a defective pleading may end a misdemeanor prosecution.

When the court dismisses a charge on the ground that there was a fatal variance between the pleading and proof, double jeopardy bars a second trial on the charge alleged in the pleading but does not necessarily bar a second trial on other offenses. *See, e.g., State v. Wall*, 96 N.C. App. 45, 384 S.E.2d 581 (1989). Whether the dismissal bars trial on related offenses is discussed further in III., below. Again, however, a successful motion to dismiss for a fatal variance may have the effect of terminating the prosecution.

### **C. Statement of Charges**

**Before Arraignment.** A prosecutor may file a misdemeanor statement of charges at any time before arraignment in district court. *See* G.S. 15A-922(d). Typically, a prosecutor will use a statement of charges to add new charges or amend a pleading that is insufficient. A statement of charges supersedes all previous pleadings in the case. Thus, only those charges alleged in the statement of charges (not those in the original warrant or other process) may proceed to trial. *See* G.S. 15A-922(a).

If the prosecutor files a statement of charges before arraignment in district court, the defendant is entitled to a continuance of at least three working days unless the judge finds that the statement of charges does not materially change the pleadings and that no additional time is necessary. *See* G.S. 15A-922(b)(2).

**After Arraignment.** After arraignment in district court, the prosecutor may file a statement of charges only if it does not change the nature of the offense. *See* G.S. 15A-922(e).

If the judge finds that the original warrant or other pleading is insufficient and that a statement of charges would not impermissibly change the offense, the judge's order must set a time limit on filing—ordinarily, three working days. The order also must provide that if the statement of charges is not filed within the time allowed, the charges must be dismissed. *See* G.S. 15A-922(b)(3). Upon the filing of a statement of charges, the defendant is entitled to a continuance of at least three working days unless the judge finds that a continuance is not required under G.S. 15A-922(b)(2).

### **D. Amendment of Pleadings**

A prosecutor may amend a warrant or other process before or after judgment if the amendment does not change the nature of the offense charged. *See* G.S. 15A-922(f). Any amendment must be in writing; otherwise, it is not effective. *See State v. Powell*, 10 N.C. App. 443, 179 S.E.2d 153 (1971).

## II. Misdemeanor Appeals

### A. Scope of Jurisdiction on Appeal

**General Rule.** On appeal of a misdemeanor conviction, the general rule is that the superior court's jurisdiction is "derivative" of the district court's jurisdiction. *See* G.S. 7A-271(b). Thus, the superior court ordinarily has jurisdiction on appeal only if:

- the charge in superior court is the same as or a lesser-included offense of the charge alleged in the pleading in district court; *and*
- the defendant was convicted in district court of the charge alleged in superior court (or the charge in superior court is a lesser-included offense).

*See State v. Hardy*, 298 N.C. 191, 257 S.E.2d 426 (1979) (defendant was charged with and convicted of assault on officer in district court; superior court did not have jurisdiction on appeal to try defendant for resisting arrest); *State v. Guffey*, 283 N.C. 94, 194 S.E.2d 827 (1973) (district court judgment indicated that defendant was convicted of impaired driving but was silent on whether defendant was convicted of charge of driving while license revoked; superior court did not have jurisdiction over latter charge); *State v. Phillips*, 127 N.C. App. 391, 489 S.E.2d 890 (1997) (in district court, defendant was tried and convicted of impaired driving, but state took voluntary dismissal of speeding charge; superior court lacked jurisdiction to try speeding charge on appeal of impaired driving conviction); *State v. Caudill*, 68 N.C. App. 268, 314 S.E.2d 592 (1984) (superior court did not have jurisdiction to try defendant on statement of charges filed in superior court for nonsupport of illegitimate child where case arose on defendant's appeal from district court conviction for nonsupport of legitimate child; prosecution could not file statement of charges alleging new offense); *State v. Killian*, 61 N.C. App. 155, 300 S.E.2d 257 (1983) (prosecution may not file statement of charges in superior court alleging acts of nonsupport that occurred after district court trial); *State v. Caldwell*, 21 N.C. App. 723, 205 S.E.2d 322 (1974) (defendant was charged with and convicted of assault on officer in district court; superior court did not have jurisdiction on appeal to try defendant for assault by pointing gun). *But see State v. Clements*, 51 N.C. App. 113, 275 S.E.2d 222 (1981) (allowing amendment in superior court).

**Exceptions.** There are two exceptions to the above rule. First, if the defendant appeals a district court judgment imposed pursuant to a plea agreement, the superior court has jurisdiction over any misdemeanor that was dismissed, reduced, or modified pursuant to that agreement. *See* G.S. 7A-271(b); G.S. 15A-1431(b); *see also State v. Fox*, 34 N.C. App. 576, 239 S.E.2d 471 (1977) (state reduced felony to misdemeanor in district court pursuant to plea agreement; on defendant's appeal of misdemeanor for trial de novo in superior court, state not bound by agreement not to prosecute felony).

Second, on appeal of a misdemeanor conviction, the superior court has jurisdiction to accept a guilty plea (but not to try the defendant) on a "related charge." *See* G.S. 7A-271(a)(5). To utilize this provision, the prosecutor apparently must file an information in

superior court alleging the related charge, to which the defendant then enters a guilty plea. *See State v. Craig*, 21 N.C. App. 51, 203 S.E.2d 401 (1974) (under pre-15A statutes, prosecution had to obtain information for “related” misdemeanor initiated in superior court); G.S. 15A-922(g) (when misdemeanor is initiated in superior court, prosecution must be on information or indictment).

## **B. Required Pleadings**

The pleading in district court may be used as the pleading in superior court on a trial de novo. The prosecution need not obtain an indictment or information. If the defendant objects to the sufficiency of a warrant or other criminal process, the prosecution may file a statement of charges as long as it does not change the nature of the offense alleged in district court. *See State v. Chase*, 117 N.C. App. 686, 453 S.E.2d 195 (1995); *see also State v. Killian*, 61 N.C. App. 155, 300 S.E.2d 257 (1983) (prosecution may not file statement of charges in superior court unless defendant objects to sufficiency of pleading).

## **C. Refiling of Misdemeanor Charges**

If the prosecution takes a voluntary dismissal in superior court of a misdemeanor appealed for trial de novo, the prosecution may not refile the case in superior court except in limited circumstances. The prosecution may do so if: (1) the case falls within one of the categories of misdemeanors that may be filed initially in superior court under G.S. 7A-271(a) (allowing misdemeanor to be filed initially in superior court if joined with related felony or if initiated by presentment); or (2) the earlier dismissal was with leave under G.S. 15A-932 (allowing reinstatement of case after dismissal with leave based on failure to appear or deferred prosecution agreement).

# **III. Other Limits After Misdemeanor Trial or Plea**

## **A. Double Jeopardy**

**Protections.** The Double Jeopardy clause of the Fifth Amendment protects against:

- a second prosecution for the same offense after acquittal;
- a second prosecution for the same offense after conviction (by trial or plea); and
- multiple punishments in a single prosecution for the same offense.

*See North Carolina v. Pearce*, 395 U.S. 711, 89 S. Ct. 2072, 23 L. Ed. 2d 656 (1969); *State v. Brunson*, 327 N.C. 244, 393 S.E.2d 860 (1990) (article 1, § 19 of state constitution affords defendants same protections).

**Test.** The test currently used to determine whether offenses are the “same” for double jeopardy purposes is the same-elements test of *Blockburger v. United States*, 284 U.S. 299, 52 S. Ct. 180, 76 L. Ed. 306 (1932). Under that test, the question is whether each offense requires proof of an element not contained in the other; if not, they are the same offense and double jeopardy bars a successive prosecution.

**Offenses Covered.** Double jeopardy protections apply to all prosecutions of a criminal nature. Thus, a finding of responsibility or nonresponsibility for an infraction, although considered a noncriminal violation of law, could bar a later criminal prosecution for the “same” offense. *See State v. Hamrick*, 110 N.C. App. 60, 428 S.E.2d 830 (1993) (so holding); *see also State v. Griffin*, 51 N.C. App. 564, 277 S.E.2d 77 (1981). Likewise, acquittal or conviction of criminal contempt could bar a later criminal prosecution. *See United States v. Dixon*, 509 U.S. 688, 113 S. Ct. 2849, 125 L. Ed. 2d 556 (1993) (finding that double jeopardy protections barred later prosecution for assault after defendant had been convicted of criminal contempt for violating domestic violence protective order forbidding same conduct).

**Attachment of Jeopardy.** In district court, jeopardy attaches after the court begins to hear evidence or accepts a guilty plea. *See State v. Brunson*, 327 N.C. 244, 393 S.E.2d 860 (1990); 3 WAYNE R. LAFAVE & JEROLD H. ISRAEL, *CRIMINAL PROCEDURE* § 24.1(c), at 64 (West. Pub. Co., 1984).

**Waiver.** If the defendant pleads guilty in superior court, he or she may not be able raise a double jeopardy claim on appeal. *See State v. Hopkins*, 279 N.C. 473, 183 S.E.2d 657 (1971); *but see United States v. Broce*, 488 U.S. 563, 109 S. Ct. 757, 102 L. Ed. 2d 927 (1989); *Thomas v. Kerby*, 44 F.3d 884 (10th Cir. 1995). A guilty plea in district court probably does not constitute a waiver of the defendant’s right to argue double jeopardy on appeal for trial de novo in superior court, but no cases have addressed the issue. *See generally State v. Sparrow*, 276 N.C. 499 173 S.E.2d 897 (1970) (defendant convicted in district court is entitled to appeal to superior court for trial de novo as matter of right, even if defendant entered guilty plea in district court).

In cases in superior court, the defendant may have to raise the issue of double jeopardy to preserve the issue for appeal. *See State v. McKenzie*, 292 N.C. 170, 232 S.E.2d 424 (1977); *but see Broce*, 488 U.S. 563. But, the failure to raise double jeopardy in district court apparently would not constitute a waiver on appeal to superior court for a trial de novo. *See generally* G.S. 15A-953 (“no motion in superior court is prejudiced by any ruling upon, or a failure to make timely motion on, the subject in district court”).

## **B. Conviction or Acquittal of Lesser Offense As Bar to Prosecution of Greater Offense**

**General Rule.** Under the same-elements test of double jeopardy, a lesser offense is always considered the “same” as the greater offense. *See Brown v. Ohio*, 432 U.S. 161, 97 S. Ct. 2221, 53 L. Ed. 2d 187 (1977). For example, conviction or acquittal of

misdemeanor assault with a deadly weapon ordinarily would bar a later prosecution of felony assault with a deadly weapon with intent to kill based on the same act.

**Limitations.** The above rule is not absolute. The main limitations are as follows.

First, the double jeopardy bar does not apply simply because the offenses involve the same act; the offenses must meet the same-elements test (although other doctrines might bar successive prosecutions based on the same incident). Thus, conviction of misdemeanor assault with a deadly weapon likely would not bar, on double jeopardy grounds, a felony prosecution for shooting into occupied property based on the same act.

Second, if subsequent events provide the basis for new charges (for example, the victim dies after a prosecution for assault), the defendant may be charged with those offenses notwithstanding a prior trial or plea. *See State v. Meadows*, 272 N.C. 327, 158 S.E.2d 638 (1968).

Third, the double jeopardy bar does not necessarily apply if the defendant acts to sever charges and then pleads guilty to one of the charges.

- In *Ohio v. Johnson*, 467 U.S. 493, 104 S. Ct. 2536, 81 L. Ed. 2d 425 (1984), the defendant pled guilty over the prosecutor's objection to one count of a multi-count indictment. The plea did not bar continued prosecution of the other counts. *See also State v. Hamrick*, 110 N.C. App. 60, 428 S.E.2d 830 (1993).
- If the defendant moves to sever offenses or opposes joinder, and then pleads guilty to one of the offenses, double jeopardy would not bar prosecution of the remaining offenses. *See Jeffers v. United States*, 432 U.S. 137, 97 S. Ct. 2207, 53 L. Ed. 2d 168 (1977) (defendant was solely responsible for severing offenses and so could not raise double jeopardy as bar).
- But, if the state schedules two offenses for different court dates, and the defendant is not responsible for severing the offenses, a defendant's guilty plea to the first-scheduled offense apparently would bar a later prosecution for the same offense. *See* 2 WAYNE R. LAFAVE & JEROLD H. ISRAEL, CRIMINAL PROCEDURE § 17.4(b), at 392–93 (West. Pub. Co., 1984).

### **C. Collateral Estoppel**

Double jeopardy includes a collateral estoppel component. Thus, if the defendant is acquitted of a misdemeanor in district court, double jeopardy bars the state from relitigating an issue necessarily decided in the defendant's favor in the previous case. *See Ashe v. Swenson*, 397 U.S. 436, 90 S. Ct. 1189, 25 L. Ed. 2d 469 (1970); *see also State v. Scott*, 331 N.C. 39, 413 S.E.2d 787 (1992) (finding under North Carolina evidence rules that state may not introduce evidence of prior alleged offense for which defendant was tried and acquitted).

The term “acquittal” obviously includes a not guilty verdict or dismissal for insufficient evidence by a district court judge. An acquittal also includes for double jeopardy purposes an implied acquittal of a greater offense. For example, if the defendant is charged with assault with a deadly weapon and is convicted of simple assault, the defendant is deemed to be acquitted of the greater offense. *See Green v. United States*, 355 U.S. 184, 78 S. Ct. 221, 2 L. Ed. 2d 199 (1957); *State v. McKenzie*, 292 N.C. 170, 232 S.E.2d 424 (1977); *State v. Broome*, 269 N.C. 661, 153 S.E.2d 384 (1967).

#### **D. Failure to Join**

By statute, North Carolina limits successive prosecutions based on the same transaction. *See* G.S. 15A-926(c). Among other things, the statute restricts the filing of new charges after trial if they could have been joined with the earlier charges—in other words, if the new charges are transactionally related to the earlier ones. The trial court must grant a motion to dismiss the new charges unless it finds that the prosecutor did not have sufficient evidence to warrant trying the new charges at the time of the first trial or that the ends of justice would be defeated. *See* G.S. 15A-926(c)(2); *see also State v. Warren*, 313 N.C. 254, 328 S.E.2d 256 (1985) (no error in allowing burglary and larceny charges to proceed after trial of related murder when insufficient evidence of those offenses existed at time of murder trial); G.S. 15A-926 official commentary (noting that statute, which was patterned after ABA standards, was intended to bar successive trials of offenses absent some reason for separate trials); 2 ABA STANDARDS FOR CRIMINAL JUSTICE § 13-2.3 & commentary (2d ed. 1980). This restriction does not apply if the defendant pled guilty or no contest to the earlier charges. *See* G.S. 15A-926(c)(3).

#### **E. Due Process**

If a defendant is convicted of a misdemeanor (for example, misdemeanor assault) in district court and appeals for a trial de novo in superior court, a subsequent indictment of the defendant for a felony assault arising out of the same incident is presumed to be vindictive and therefore in violation of due process. *See Blackledge v. Perry*, 417 U.S. 21, 94 S. Ct. 2098, 40 L. Ed. 2d 628 (1974) (Due Process bars indictment for more serious offense regardless of whether prosecutor acted in good or bad faith); *see also Thigpen v. Roberts*, 468 U.S. 27, 104 S. Ct. 2916, 82 L. Ed. 2d 23 (1984) (following *Blackledge*); *State v. Mayes*, 31 N.C. App. 694, 230 S.E.2d 563 (1976) (recognizing that showing of actual vindictiveness not required).

Can the state rebut this presumption of vindictiveness? The only situation in which the U.S. Supreme Court has suggested that the presumption may be rebutted is when subsequent events form the basis for new charges (for example, the victim dies after appeal). *See Blackledge*, 417 U.S. at 29 n. 7; *Thigpen*, 468 U.S. at n.6. What other circumstances, if any, would be sufficient to rebut the presumption remains unclear.

#### **IV. Examples of Pleading Problems**

##### **A. No Crime/Unintelligible Charge**

*See State v. Wallace*, 49 N.C. App. 475, 271 S.E.2d 760 (1980).

##### **B. Name of Victim**

*See State v. Abraham*, 338 N.C. 315, 451 S.E.2d 131 (1994) (error to allow state to amend assault indictment to change name of victim from Carlose Antoine Latter to Joice Hardin, which fundamentally altered nature of charge); *State v. Hughes*, 118 N.C. App. 573, 455 S.E.2d 912 (1995) (error to allow amendment to indictment changing alleged victim from individual, “Mike Frost, President of Petroleum World, Inc.,” to corporation, “Petroleum World, Inc.”); *State v. Banks*, 263 N.C. 784, 140 S.E.2d 318 (1965) (warrant charging peeping into room occupied by female was fatally defective because it failed to name female).

##### **C. Name of Defendant**

*See State v. Simpson*, 302 N.C. 613, 276 S.E.2d 361 (1981) (failure to name or otherwise identify defendant was fatal defect in indictment).

##### **D. Date or Time of Offense**

Variance as to date or time alleged in pleading is material when it deprives a defendant of an opportunity to present his or her defense, such as when the defendant relies on an “alibi” defense. *See State v. Christopher*, 307 N.C. 645, 300 S.E.2d 381 (1983).

##### **E. Assault on Officer/Resist, Obstruct, or Delay**

*See State v. Wells*, 59 N.C. App. 682, 298 S.E.2d 73 (1982) (citation that charged resisting arrest was fatally defective for omission of duty officer was performing); *State v. Powell*, 10 N.C. App. 443, 179 S.E.2d 153 (1971) (the words “resist arrest” in citation were insufficient to charge offense; the words “assault on officer” also were insufficient because the victim, that is, the officer allegedly assaulted, was not identified). *See also* G.S. 14-223 case notes (indictments and warrants).