

Challenging the Pleadings



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Pleading Basics



- Is it a pleading?
- What kind of pleading is it?

Drafting Defects

- Duplicity
 - Is the citation “duplicitous”?
 - What relief should you seek? When?
- Failure to charge offense or element of offense
 - Does the charge of “assault officer” fail to charge an offense?
 - What relief should you seek? When?
 - Can the prosecutor amend? Do a statement of charges?
 - If you win, does double jeopardy apply?
- Other potential problems
 - Is the failure to list the time fatal?
 - Is the failure to specify the location of the driving offenses fatal?

Proof Defects

- Although the defendant is charged in district court with assault on an officer, the evidence shows only that the defendant obstructed the officer.
 - What relief should you seek? When?
 - Can the prosecutor amend the pleading to charge RDO?
 - What are other common variance examples?

Appeal Defects

- Assume that the defendant is convicted in district court of assault on an officer. On appeal to superior court, the prosecutor seeks to amend the pleading to charge RDO.
 - May the prosecutor proceed on the RDO charge in superior court?
 - What relief should you seek? When?

More Appeal Defects

- Assume that the district court allows the state to amend the pleading to charge RDO instead of assault on an officer. The defendant is convicted of RDO and appeals.
 - May the prosecutor proceed on the RDO charge in superior court?
 - May the prosecutor proceed on the original assault charge?
 - What relief do you seek? When?
- Beware charges dismissed per plea agreement.

Joinder Defects

- Assume that the evidence in district court shows that the defendant delayed but did not assault the officer, and the defendant is acquitted. Rather than trying to amend the pleading, the prosecutor initiates a new case charging RDO.
 - May the prosecutor proceed on RDO notwithstanding the acquittal of assault based on same conduct?

Double Jeopardy Defects

- In addition to being charged in district court with assault on an officer, the defendant is charged with felony assault on an officer based on the same act. The defendant pleads guilty to misdemeanor assault when the case is called in district court.
 - May the prosecutor thereafter proceed on the felony charge?
 - What relief do you seek? When?
- Watch exceptions to double jeopardy rules.

Due Process Defects

- Assume that the prosecutor properly files a statement of charges in district court alleging RDO instead of assault. The defendant is convicted of RDO and appeals. The prosecutor then obtains an indictment for felony assault on an officer based on the same acts.
 - May prosecutor proceed on the felony assault charge?
 - What relief should you seek? When?

Summary

- Drafting defects
 - If duplicity, move to require election at start of trial.
 - If failure to charge offense, move to dismiss at start of trial (unless there are strategic reasons to wait).
- Proof defects
 - If variance, move to dismiss or for nonsuit at close of state's and all evidence.

Summary-2

- Appeal defects
 - If charge different than charge that was properly alleged in district court and was basis for conviction, move to dismiss before trial.
- Joinder defects
 - If related charge after conviction or acquittal, move to dismiss before trial.

Summary-3

- Double Jeopardy defects
 - If same or greater charge after conviction or acquittal, move to dismiss before trial.
- Due Process defects
 - If greater charge after appeal for trial de novo, move to dismiss before trial.