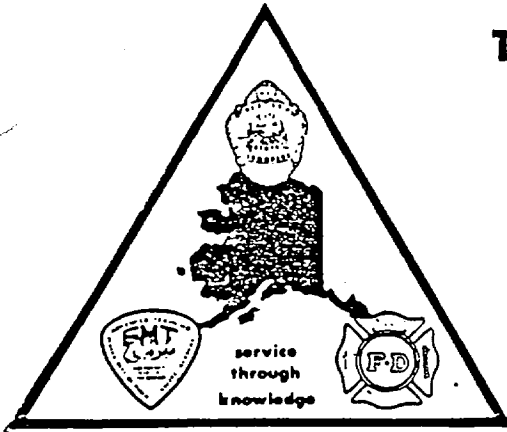


DEPARTMENT OF PUBLIC SAFETY

TRAINING ACADEMY



LEGAL BULLETIN NO. 71
June 21, 1983

SEARCH WARRANT PARTICULARLY DESCRIBING THINGS TO BE SEIZED

Reference: William NAMEN
v.
State of Alaska

Alaska Court of Appeals
Opinion No. 264
665 P.2d 557
June 17, 1983

FACTS:

A burglary occurred at the SHOEMAKER residence where \$40,000 in jewelry was taken. Police investigators developed George MALDONADO as a suspect. MALDONADO gave a statement implicating Rusty CHAVEZ as the perpetrator of the burglary. MALDONADO stated that CHAVEZ had sold the jewelry to NAMEN and he was present when the sale took place and recognized the jewelry as the property of Mrs. SHOEMAKER.

One week after the burglary, the State applied for a warrant to search NAMEN's residence for the stolen jewelry. The application was made by sworn testimony before a District Court judge rather than in affidavit form. In the course of his testimony, the officer referred to the inventory of stolen property compiled by police, but the inventory itself was never read nor otherwise made a part of the record. The warrant was issued authorizing the seizure of "jewelry stolen from 100 East Fireweed, #B, on February 6, 1980." No further description of the SHOEMAKER jewelry was provided in the warrant. The warrant was executed and a large quantity of the SHOEMAKER jewelry was recovered. NAMEN was convicted and he appealed.

ISSUE: Was it necessary for the warrant to describe any physical attributes of the stolen jewelry?

HELD: Yes.

REASONING:

1. The Fourth Amendment to the United States Constitution requires that "no warrant shall be issued, but upon probable cause, ...and particularly describing the place to be searched, and the person or things to be seized." (emphasis added)

2. Objects at which a warrant is directed serves to protect against the possibility of a general exploratory search, to assure that articles of

property outside the legitimate scope of the warrant are not subject to mistaken seizure, and to reinforce the fundamental rule that seizure of property cannot be permitted in the absence of probable cause.

3. Search warrants must describe the property to be seized in a manner that is reasonably specific under the circumstances of the given case so that policies underlying the particularity requirement may be best effectuated.

4. In describing the jewelry to be seized as having been stolen from the SHOEMAKER residence, the warrant revealed nothing about the physical appearance nor condition of that property and could, in and of itself, provide no guidance to officers conducting the search as to what specific pieces of jewelry at NAMEN's residence were included or excluded from the scope of the warrant.

5. The jewelry was capable of being described with greater particularity since an inventory had in fact been compiled.

NOTES:

There was nothing to preclude the officer in this case from making the inventory compiled by the police a part of the record. Had this been done the "particularity requirement" would have been satisfied.

Since Alaska statehood, only two cases involving search warrants have been reversed---this one and another one which involved "probable cause" in the affidavit to seize bank records. This should demonstrate the advisability of getting a search warrant, absent exigent circumstances, whenever possible.