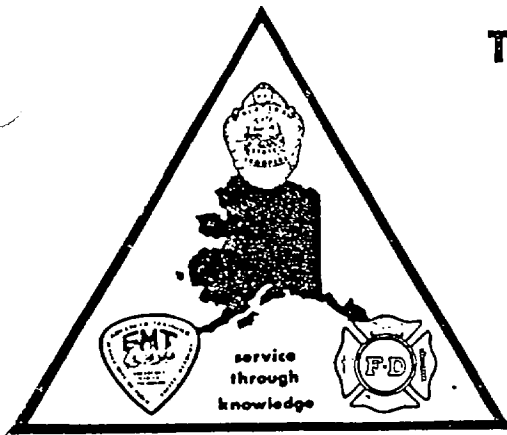


DEPARTMENT OF PUBLIC SAFETY

TRAINING ACADEMY

LEGAL BULLETIN NO. 65



SEIZURE OF PALM PRINTS FROM IN-CUSTODY DEFENDANT FOR COMPARISON IN NON-CHARGED OFFENSE

Reference: Ricky LISTON
v.
State of Alaska

Alaska Court of Appeals
Opinion No. 219
P.2d
February 18, 1983

FACTS:

LISTON was arrested for assault on an airport police officer. At the security office, the following property was taken from his person and locked in a desk drawer: \$500 in cash, an airplane ticket and two packets of white powder. LISTON was booked and released when his mother posted bail. During the evening or early morning hours, the security office was broken into and the plastic packets and money were stolen. Palm prints were lifted from conduit pipes above the ceiling to the office area where it was believed the intruder made his entry. The police had no known palm prints of LISTON for comparison.

LISTON appeared for arraignment on the assault charges ten days later. The prosecutor successfully moved to have LISTON's bail increased, arguing that he was a suspect in the burglary. He had not been charged with the burglary and no court order had been obtained permitting the police to take his palm prints. Nevertheless, the officer investigating the burglary ordered the Corrections officials holding LISTON to obtain his palm prints. LISTON's palm prints matched the print found at the scene. LISTON moved to suppress the evidence reasoning that the palm print had been obtained in violation of Alaska Rule of Criminal Procedure 16(c). He did not argue a state constitutional violation.

Alaska Rule of Criminal Procedure 16(c) provides in relevant part:

"(c) Disclosure to the Prosecuting Attorney.

(1) Non-Testimonial Identification Procedures--Authority.

Upon application of the prosecuting attorney, the court by order may direct any person to participate in one or more of the procedures specified in subsection (c)(2) of this rule if affidavit or testimony shows probable cause to believe that:

(i) An offense has been committed by one of several persons comprising a narrow focal group that includes the subject person;

(ii) The evidence sought may be of material aid in identifying who committed the offense; and

(iii) The evidence sought cannot practicably be obtained from other sources.

(2) Non-Testimonial Identification Procedures--Scope.

An order issued under subsection (c)(1) of this rule may direct the person to do or submit to any and all of the following:

- (i) Appear in a line-up;
- (ii) Speak words, phrases or sentences relevant to the case for identification by witnesses;
- (iii) Be fingerprinted.
- (iv) Pose for photographs not involving re-enactment of a scene;
- (v) Try on articles of clothing;
- (vi) Permit the taking of specimens of material under his fingernails;
- (vii) Permit the taking of samples of blood, hair and other materials of his body which involved no unreasonable intrusion thereof;
- (viii) Provide specimens of his handwriting;
- (ix) Submit to a reasonable physical or medical inspection of his body.

(3) Right to Counsel. When issuing an order under subsection (c)(1) of this rule, the court shall also order that the person be represented by counsel or waive his right to be represented by counsel before being required to appear in a lineup, give a specimen of handwriting, or speak for identification by witnesses of an offense."

ISSUE:

The sole question is whether Alaska Rule of Criminal Procedure 16(c) was intended to apply to those in custody. (emphasis added)

HELD: No.

REASONING:

1. The federal constitution does not prevent the police from obtaining evidence such as palm prints from someone lawfully in their custody without a warrant. (emphasis added)

2. The commentary to Alaska Rule of Criminal Procedure 16(c) makes it clear that the section was intended to enable the prosecution to obtain evidence--e.g., fingerprints--from those not in custody. It was not intended to address the rights of those in custody. (emphasis added)

NOTES:

LISTON did not argue that our state constitution precludes the police from obtaining palm prints without a warrant, only that Procedure 16' applies to those in custody. The constitutional issue is still an

"open question" until challenged.

You still cannot obtain identification evidence, such as fingerprints, from those who are not legally in custody without a court order. That means you cannot "round up" possible suspects and obtain their fingerprints, hair samples, and similar evidence absent a court order or their consent. If consent is obtained, it is suggested you get a written search waiver to seize items such as fingerprints, hair, blood, spitum, photographs, etc.