

1973 WL 26958 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

November 7, 1973

***1 re: Fingerprinting and Photographing of Persons Under Arrest**

Mr. Ervin I. Elsey
Chief Identification Officer
North Charleston Police Department
P. O. Box 5817
North Charleston, South Carolina 29406

Dear Mr. Elsey:

Both federal and state courts have recognized that the compulsory fingerprinting and photographing of persons under arrest does not violate the rights of the accused under the United States Constitution. In [Schmerber v. California](#), 384 U.S. 757, 86 S.Ct. 1826, 16 L.Ed.2d (1966) the United States Supreme Court held these procedures did not run afoul of the Fifth Amendment's privilege against self-incrimination inasmuch as they did not force a defendant to provide the State with evidence of a communicative or testimonial nature. Likewise, in [United States v. Wade](#), 388 U.S. 218, 87 S.Ct. 1926, 18 L.Ed.2d 1149 (1971) the Court ruled that the taking of fingerprints and similar investigatory techniques could not be characterized as 'critical stages' of a prosecution and, therefore, the denial of counsel at these times did not violate the Sixth Amendment. Accord, [State v. Campbell](#), 256 S.C. 474, 182 S.E.2d 883 (1971).

The primary purpose of fingerprinting (and photographing) is to obtain positive identification of the accused. The information obtained can determine the presence or absence of a prior record and can be used for future identification in the event of flight from prosecution or arrest for subsequent offenses. These valid governmental interests justify the use of photographing and fingerprinting as identification procedures after arrest or charge. [United States v. Laub Baking Co.](#), 283 F.Supp. 217 (D.C. Ohio 1968). Laub Baking also rejected the argument that fingerprinting and photographing violate the 'right of privacy' of the criminally accused. [Id.](#) at 228.

In specific response to your inquiry, there are no legal precedents indicating the time frame within which these steps must be taken. The cases cited above sanction fingerprinting and photographing after arrest as part of standard law enforcement operating procedure. Such authorization would necessarily involve the right to make these identifications before the accused is released from police custody.

Sincerely,

Dudley Saleeby, Jr.
Assistant Attorney General

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