

LAW ENFORCEMENT

The Use of Search Warrants in Cases of Crimes Against Children

—by Bill Walsh

For many reasons, investigators frequently under-utilize search warrants in the investigation of crimes against children.

Most investigators would agree that crimes against children are among the most difficult cases encountered by law enforcement. These cases routinely have no physical or medical evidence, no witnesses, and a victim who may be viewed as less credible than the adult defendant. Many times these investigations result in cases that go to court with the testimony of the child as the only evidence presented against the defendant. While in some situations such "swearing contests" are unavoidable, in many other instances the use of search warrants could have produced additional evidence.

Search warrants are investigative tools that are well understood and routinely utilized by law enforcement in the investigation of crimes involving drug dealing, violence and property loss. But for many reasons, investigators frequently under-utilize search warrants in the investigation of crimes against children. Child abuse—physical, sexual, and fatal abuse, neglect, sexual exploitation, and child pornography—may present the investigator with numerous opportunities to utilize search warrants. The investigator must be able to recognize and seize these opportunities. Properly executed search warrants resulting in the recovery of evidence will result in stronger cases and fewer "swearing

contests." Search warrants can be indispensable tools in answering the investigator's questions of who, what, where, when, how, and why.

The purpose of this article is to familiarize investigators with the use of search warrants during the investigation of crimes against children. Since state laws, as well as agency policies and procedures related to search warrants vary greatly, readers are advised to contact their local prosecutor or agency legal advisor on the specific statutes and policies that apply in their jurisdiction.

Recovery of physical evidence

The primary use of a search warrant is to recover physical evidence from a location, vehicle, object, or person. In sexual abuse cases, physical evidence may include items used by the offender during the assault, such as lubricants, sexual devices, pornography, restraints, lingerie, etc. During some assaults, blood, semen, or hair may have been deposited on clothing, tissues or sheets, and these items should be seized. If collections of adult pornographic videos are discovered during a search of the offender's home, investigators should determine if the offender showed the videos to his victims. In cases where the offender has photographed or videotaped the child, the equipment, photos, and/or videos of the child should be listed in the warrant. Homemade child pornography that depicts the offender and the child involved in sexual contact is very powerful evidence against a defendant. In one case the author investigated, nude pictures of the offender and the child were found on a roll of film

that was left undeveloped in the offender's camera. Offenders may videotape themselves molesting the child as well. In non-familial cases, clothing or possessions left by the child or taken by the offender as souvenirs could also be included in the search warrant.

Search warrants can also be used to obtain evidence from a subject's body. In some sexual assaults, the child may have observed that the offender had a particular tattoo, birthmark, or malformation on a part of the body normally covered by clothing. A search warrant could be used to photograph it and verify the child's account. Search warrants may also be used to collect blood and hair samples for DNA analysis. Such samples must be collected in a manner that meets legal requirements as well as accepted scientific and medical practice: proper evidence handling and maintenance of the chain of custody are critical when the evidence will be subjected to laboratory analysis.

In physical abuse cases, the implements used to inflict the child's injuries should be searched for and seized. Belts, extension cords, paddles, and curling irons are commonly used to abuse children. In some instances, it may be advisable to submit these items for analysis to determine if they contain blood or tissue that can be linked to the child. Additionally, these items may serve as valuable pieces of demonstrative evidence in the prosecution of the offender. In cases where a child has been scalded in a tub, search warrants can be useful in allowing an investigator the opportunity to examine and photograph the location where the injury occurred and search for possible evidence.

Search warrants can also be useful in cases where a child is reported to have suffered a suspicious fall. While it may be impractical to take a couch into evidence, a warrant could provide for its examination, measurement and photographing. The same applies to the flooring that the child is alleged to have fallen on. In some cases, however, it might be advisable to actually remove a section of the rug and pad that a child is alleged to have fallen on. If the caretaker claims the child was injured because a high chair or crib collapsed, these items should be seized so that they can be tested.

Corroboration of the child's testimony

The absence of physical or medical evidence in a crime presents the investigator with the challenge of proving or disproving the case through other means. In these cases, investigators must consider other ways to corroborate the child's account of the abuse. The child may be able to describe details of the assault, the location, or the suspect that they would not know had they not been victimized. A thorough investigative interview of the child may reveal details that can later be verified through the execution of a search warrant. In one case, a grand-

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father molested his granddaughter in his bedroom and "locked" the door by inserting a knife across the door facing into the doorjamb. This temporary lock was used to prevent anyone from walking in during the assault. When the child told this detail to investigators, a search warrant was used to examine the doorjamb for the resultant knife marks. They were found and photographed. The suspect, unable to offer a more plausible explanation for the marks than the child, changed his plea to guilty. It was later learned from the suspect's daughter that he had employed this same technique when he molested her, twenty years earlier.

Some offenders show children adult pornography, either in magazines or on videos, in an attempt to lower their inhibitions. If the child can describe this material and where it is hidden, a search warrant can be used to recover the material. In some states, it is a crime for an adult to show such material to a child (Texas Penal Code, 1994).

The investigator should also determine if the offender attempted to insure that child's silence about the assault. The recovery of any material things the offender gave the child, as well as evidence of threats, can be used to corroborate this "secrecy pact." Evidence that threats were employed may be proven by the recovery of a weapon the suspect used to threaten the child. "Cognitive interviewing" techniques may be useful in obtaining these details (Saywitz, 1992).

Occasionally, a child with a behavior problem may appear less credible than the suspect. This is often the situation in cases involving adolescents or those who admit to prior sexual activity.

In one case, a counselor at a residential facility for troubled teenage girls was accused of sexually assaulting several girls at his off campus residence. The counselor had no criminal history and enjoyed a very favorable reputation with his superiors. The girls had juvenile records and were viewed by some as being less credible than the counselor. There was no medical evidence to corroborate the victims' accounts. When questioned about the allegations, the counselor not only denied that he sexually assaulted the girls, he denied that they were ever in his home. Separate interviews of the girls resulted in detailed descriptions of the counselor's house as well as its furnishings. When the case went to court, the suspect was unable to explain how each of the girls was able to describe the wine bottle lamp next to his

bed, the picture on the wall above it, and the business card for his mother's nail salon that was stuck in the mirror of the medicine cabinet. Each of these items was photographed and seized during the execution of the search warrant of the offender's

house. While these items did not absolutely prove that the sexual abuse had occurred, they did serve to increase the victims' credibility and decrease that of the defendant. The judge found the counselor guilty and sentenced him to prison.

Identification of other victims

In many cases, offenders have numerous victims, either at once or over a period of time. This fact provides investigators with the opportunity to strengthen their case by identifying additional victims and filing additional cases against the offender. Investigators should always ask the child involved in the instant case if he or she has knowledge or suspicion of any other children that may have been assaulted by the offender. Photos, diaries, letters, address books, or child pornography found at a suspect's residence may lead investigators to the identification of other victims. The fact that an offender has multiple victims may increase the tactical advantage of the prosecutor, especially in plea bargaining situations.

Identification of other offenders

On occasion, offenders may act together. Even if not actively involved in the abuse of children together, offenders may correspond or trade child pornography. Search warrants may uncover evidence of abuse being committed by other offenders, locally or in another community, previously unknown to the investigator. By identifying an accomplice who can be persuaded to testify against another offender, the instant case can be strengthened.

In one case, a search warrant led to the discovery of letters from an out-of-town offender in which he bragged about molesting and photographing his daughter. These letters had been sent, along with child pornography, to the first offender under investigation, and were found during a search of his home. As a result, the second offender was identified, prosecuted, and convicted.

Recovery of other contraband

A person under investigation for child abuse may be involved in other criminal activity. A search of his or her residence for items related to the abuse investigation may lead to the discovery of evidence of drug violations, theft, or possession of illegal firearms. While search warrants cannot be used to conduct a "fishing expedition," investigators may legally look anywhere that is physically capable of holding the item they are searching for. For example, looking in a jewelry box to find photographs is reasonable. Evidence of other criminal activities may corroborate a child's account or provide additional leverage for the investigator or prosecutor handling the abuse case. Conversely, looking for evidence in other cases may lead to the discovery of evidence of child abuse.

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Photodocumentation of injuries

Some state laws provide that search warrants can be used for purposes of photographing an injured child (Texas Code of Criminal Procedure, 1994). These statutes usually include provisions stipulating which particular crimes are applicable. Additionally, they may specify the procedures to be followed in photographing the child if the child and the investigator are of different genders.

A search warrant specifying the photodocumentation of injuries can prove useful in cases where abuse is suspected and the caretakers are being uncooperative. In one case, it was believed that a child had been injured because of screams the neighbors heard the night before. When investigators went to the house, no one would answer the

door or the telephone. The investigators obtained a search warrant to photograph the "Jane Doe" child they believed to be injured. When the investigators went inside, they discovered a child that had been intentionally scalded with boiling water the night before. The child was taken into protective custody and the mother was charged with the assault.

Providing for arrest

In some jurisdictions, search warrants can also order someone's arrest (Texas Code of Criminal Procedure, 1994). If investigators believe that the suspect will be at the location to be searched, they may want to consider having the warrant provide for the arrest of that person at the same time the search warrant is executed. If the suspect is not present, he may be arrested at a later time if the warrant is still valid.

Information for the interrogation

Many offenders will confess to their crimes if properly interrogated. The more investigators know about the offender, the better prepared they will be to conduct the interrogation. Information learned about the offender during the execution of a search warrant may prove to be useful in the interrogation. Knowing about a suspect's past may give some clue to his current behavior. In one case, the author discovered that an offender had, years before, been convicted of sexually abusing his son and had his parental rights terminated. During the interrogation of the offender for the sexual abuse of a different boy, the author asked the suspect to think of his own son. The suspect eventually gave a full confession. He later told the author he confessed because he did not want his latest victim to experience the same embarrassment his own son experienced when he had to testify in court.

Information for the child interview

In the case described above, a child, whom police had strong reason to suspect had been victimized, initially denied that the offender had molested

him. During a search of the offender's home, however, pornographic videotapes of the child were found. The child was told about these tapes during an interview, and he eventually disclosed all the details of the abuse. In another case, a search warrant led to the discovery of numerous pictures of adolescent males. Police officers who worked in nearby schools were asked to identify the children in the pictures. Most of the children in the photographs were later identified and most of them admitted to being victimized by the offender. Not only did this successful search result in additional cases being filed against the offender, it led to the discovery of victims who needed help and had not yet disclosed their abuse.

Computer equipment

Occasionally, offenders use computers to further their activities. Computers can be used by offenders to maintain correspondence, diaries, and information related to children. Photographs of children can be scanned into the computer's memory for safe storage. Offenders can also allow children to play computer games, including sexually explicit games. If an offender uses computer bulletin boards, he may be in contact with other offenders and even children without leaving his home. In one case, an offender pretending to be a teenage boy conversed with a girl through a bulletin board and arranged to meet her. When they met, he sexually assaulted her.

If investigators suspect that an offender has used a computer for any of the purposes described above, they should consider the computer a possible source of evidence. A properly worded search warrant can be used to seize the computer and examine its files. Careful planning and caution must be exercised when computers are seized and their files are searched, however; investigators and their agencies could be subject to civil lawsuits if information contained in computer files is damaged or lost due to the investigator's actions. Investigators should obtain assistance from someone knowledgeable about computers for this task. It is helpful to copy the original files before they are searched so as to ensure that the original files are not changed or damaged in any manner.

Practical considerations

Move quickly

In child abuse cases, a lack of physical evidence does not prove an allegation is untrue. However, any physical evidence that is found may help corroborate the child's account. The chance of recovering such evidence is greatest if attempts are made to obtain it early in the investigation. Ideally, this is done before the suspect knows he or she is under investigation. Delays give the suspect the opportunity to move, destroy, or alter evidence. Even if the suspect is in custody, delays may allow him the time to contact someone who will do the job.

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A valid consent to search, granted by a person or persons with the authority to give consent, can prevent suppression of evidence if the search warrant is ruled invalid at a later time.

Obtain consent if possible

Before executing a search warrant, investigators should attempt to have the owner, landlord, or person in charge of the location sign a consent to search form, whether or not that person is the suspect, and before that person is advised of the existence of a search warrant. A valid consent, granted by a person or persons with the authority to give consent, can prevent suppression of evidence if the search warrant is ruled invalid at a later time. Do not, however, rely solely on a consent to search. A suspect who grants consent may later withdraw it if he or she feels the investigators are about to discover something incriminating. At this point, the investigators would have to discontinue the search, secure the premises and then obtain the warrant that should have been obtained initially. Relying solely on a consent to search can also cause problems if the suspect later claims to have been tricked or coerced into giving consent,

or the court rules that the person who gave consent was not legally authorized to do so.

Photograph or videotape the search

It is advisable to photograph and/or videotape the location prior to, during, and after the execution of the search warrant. Photographic documentation serves several purposes. Pictures or videos can document where items were found and protect the investigators from claims that they damaged property or left the location in total disarray after the search. Without documentation, holes in walls, overturned furniture, broken lamps, and other disarray that preceded the search can be blamed on investigators. Pictures and videos also serve to create a permanent record of items found in the background of pornographic photographs or videos: furniture, fixtures, wallpaper, etc. In another of the author's cases, locations seen in child pornography videos seized from a suspect's home were later matched to photographs and videos taken during the execution of the original search warrant. If investigators are going to videotape a search warrant being executed, all members of the search team must be reminded that an audio recording is being made, or the audio function turned off. Items taken as evidence during the search and listed on the inventory or search warrant return should be photographed or videotaped as well.

Take every videotape listed as evidence

If videotapes are listed as items to be seized in the warrant, investigators must resist the urge to view the tapes at the location in a random fashion. Every video to be taken as evidence should be viewed carefully in its entirety at a later time.

Drugs are quickly cut and sold, but child pornography is almost always retained forever by the collector.

Offenders have been known to incorrectly label pornographic tapes with innocuous titles or put the pornography in the middle of a tape. In one case, a videotape was recovered on which the offender had taped a child masturbating. For some reason, the offender handed the child the camera, and the child began taping the offender before he realized what was happening. Prior to that point there was no proof as to the identity of the offender. Investigators should also listen carefully to videotapes; the offender or the child may say something of importance, or the audio track of the videotape may contain a conversation or radio or television broadcast in the background that may help establish the date the video was made.

Timeliness of information

There are no clear cut rules about when information related to an offense may be considered "stale"; it depends on the nature of the evidence sought and the crime committed. Drugs are quickly cut and sold, but child pornography is almost always retained forever by the collector. Expert knowledge of child abusers should be included in the affidavit for the warrant, explaining that child pornography and child erotica are kept forever by the pedophile, not consumed like drugs. Up to date information should be supplied in the affidavit for the warrant whenever possible.

Safety issues

The execution of a search warrant should always be conducted with officer safety in mind. People accused of child abuse can be dangerous. They may fear the effects of disclosure; some offenders may feel that their life is no longer worth living and may be considering suicide. They may decide to take someone with them, someone responsible for their troubles—i.e., the investigator. If the offender is present during the search, he should be carefully patted down for weapons. If he is arrested, he should be handcuffed. The offender should never be left alone while a search is being conducted. Investigators must exercise caution if family members or other associates of the offender are present, and should request that they either stay in one room or leave the location while the search is being conducted. Remember, weapons can be hidden anywhere throughout the house. Investigators must also be aware of other hazards hidden at the location, including hypodermic needles, chemical hazards, attack dogs, and explosives. Officers should always wear rubber gloves when conducting a search and look carefully before reaching into dresser drawers or other places sharp objects could be located.

Summary

Child abuse investigations are difficult cases for law enforcement. Investigators should view their role as fact finders and view search warrants as

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tools that can assist fact finding. Search warrants can be used to recover evidence and identify victims and offenders. Information gained through the execution of a search warrant may better prepare the investigator to interview the victim and interrogate the offender. Investigators must move quickly when search warrants are used so as to prevent the removal or destruction of evidence. As in all other areas of police work, investigators executing search warrants must be careful and follow proper officer safety procedures. Investigators should consider

search warrants an important investigative tool and use them whenever justified.

References

Saywitz, Karen (1992) Enhancing children's memory with the cognitive interview. *The APSAC Advisor*, 5(3) 11-13.

Texas Code of Criminal Procedure. Article 18.02, 1994

Texas Code of Criminal Procedure. Article 18.03, 1994

Texas Penal Code. Section 43.22, 1994.

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CHILD PROTECTIVE SERVICES Working with CPS families with alcohol or other drug (AOD) problems

—by Ronald Zuskin and Diane DePanfilis

Numerous child welfare professionals have called attention to the fact that children from families with alcohol or other drug (AOD) problems are overwhelming the service delivery capacities of the child protective services (CPS) system (Besharov, 1994; Curtis and McCullough, 1993; McCurdy and Daro, 1993; Tutara, 1990). AOD cases present complex circumstances for CPS workers to sort out; further complicating this growing epidemic is the inadequate understanding of AOD related parenting problems held by the typical CPS worker¹.

It is the responsibility of the CPS worker to (1) recognize alcohol or other drug related symptoms; (2) collect information about AOD use as part of the risk assessment; (3) conduct family assessments that evaluate the specific effect of AOD problems on parenting adequacy; (4) design treatment plans and service agreements that address AOD problems; (5) coordinate meaningful referrals and interventions provided by addiction counseling agencies; and (6) evaluate progress of parents in recovery. The coexistence of AOD problems and child maltreatment is an area in which the development and dissemination of knowledge have not kept pace with the need. The purpose of this article is to help meet this need.

Recognizing a problem

When does use of alcohol or an illegal substance become a problem? Three levels of AOD involvement are commonly identified: use, abuse, and dependence (addiction). R. E. Griffin offers a helpful summary, worth quoting at length:

Use refers to taking a drug for pleasure in order to achieve a sense of well-being. A drinker who has a martini after work while fulfilling his or her usual responsibilities fits this category. This type of drinker is likely to discontinue use if he or she notices undesirable consequences. For those who abuse drugs, the drug and its effects interfere with the individual's

ability to carry out expected responsibilities.

For instance, the abuser may risk eviction by purchasing drugs instead of paying the rent or mortgage. The abuser actively pursues opportunities to use drugs and continues despite untoward results. Often the boundaries between drug abuse, dependence, and addiction are blurred. The drug-dependent individual persists in using drugs, disregarding any negative consequences and exhibiting tolerance to the drug and withdrawal symptoms when he or she cannot have the drug. Preoccupation with acquiring and using the drug results in poor judgment. For example, drug dependent parents may leave an infant unsupervised while they seek the next "fix." In their denial, these individuals often believe that their drugged state is normal and strive to sustain it. Such psychological dependence is difficult for the addict to overcome. They are unable to control their drug use and their social functioning is inadequate (Griffin, 1993).

AOD and behavior

Drugs of abuse are used for their mood or mind altering effects. They are grouped by families based on related chemical properties. Persons susceptible to tolerance or addiction to one chemical in a family are susceptible to tolerance or addiction to all drugs in that family. Table 1 lists all drugs of abuse by family and charts the different effects of various drug families on behavior during intoxication, acute withdrawal, and chronic protracted withdrawal.

Drugs affect behavior, as well as the mood and mind of the user; therefore, the user's parenting will also be affected by AOD problems.

Intoxication

"Intoxication" literally means being poisoned by a toxin. CPS workers are most concerned about the risks for maltreatment generated by intoxication; a review of behaviors associated with intoxication — loss of inhibitions, poor judgment, irritability, depression, paranoia, mood swings, aggression, violence, etc. — support such concerns. However, risks to children from a parent's AOD problems are not limited to the parents' intoxicated state.

The coexistence of AOD problems and child maltreatment is an area in which the development and dissemination of knowledge have not kept pace with the need.

¹ While this article is directed toward CPS workers, all professionals in the fields of child maltreatment and substance abuse need to be aware of these concurrent problems and able to respond appropriately.

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