



CENTER PIECE

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Picture This: Photographing a Child Sexual Abuse Crime Scene

By Victor Vieth¹



Introduction

In every case of child sexual abuse, there is a crime scene that needs to be inspected and photographed. Even in the absence of blood, semen, or other clear evidence of abuse, the mere photographing of the scene in which a child was sexually violated can produce evidence of critical importance to the prosecutor. Indeed, there are at least ten possible benefits to photographing the crime scene.

1. Crime scene photographs may help a child testify

Assume that six year old Molly states during a forensic interview that her father came into her room shortly before bedtime ostensibly to read a book. Molly tells the forensic interviewer that her father removed a Winnie the Pooh book from the bookcase in her closet and then sat on her bed. As he read the book, Molly's father placed his hands between her legs and began to "move his hand around." After the story, Molly reports her

dad placed the book on her nightstand, pulled Molly onto the floor, and "next to the bed" licked her "koochie." When asked to label her "koochie" on an anatomical diagram, Molly pointed to the vagina.

In the event this case comes to trial, photographs of the crime scene may assist Molly in testifying. As one example, a prosecutor could show Molly pictures of her room and ask her to point to where "next to the bed" is.

2. Crime scene photographs may corroborate key aspects of a child's statement

In the example just given, crime scene photos not only help Molly explain what happened to her, these photographs also corroborate peripheral details of her statement. If there is, indeed, a closet, a story book, a nightstand and enough space on the floor in which to sexually abuse the child, these peripheral details increase the chance her allegation of abuse is valid.



UP COMING conferences

*When Words Matter:
Emerging Issues in
Forensic Interviewing*

May 4-7, 2009 • St. Louis, MO

When Words Matter is ideal for child protection professionals who conduct forensic interviews or who defend them in court. *When Words Matter* will feature nationally recognized experts on forensic interviewing including Mark Everson, Tom Lyon, Allison DeFelice, Chris Newlin, Mike Johnson, Mindy Mitnick and Victor Vieth. In addition to a review of the latest research impacting the forensic interview, there will be presentations on interviewing children who make "fantastic statements", on cross examining defense "experts", conducting interviews in cases with repeated allegations, and on the potential impact on the forensic interview of a child's immigration status. For a full agenda, or to register for the course, call the National Child Protection Training Center at 507-457-2890 or visit our website at www.ncptc.org Register soon - this course fills up early and our space is limited.

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3. Crime scene photographs may be relevant to prove one or more elements of a crime

In cases of statutory rape, a prosecutor does not have to prove consent but he does have to prove the child is below a certain age. The child, of course, can testify as to her age as can parents or others with knowledge of this fact. If there is a significant issue as to age, birth records and other documents may be admissible. Crime scene photographs can also be admitted as evidence of the child's age and are often more powerful. Such photographs allow the prosecutor to highlight how young, and how vulnerable the child was. With the aid of crime scene photographs, a prosecutor could make the following argument:

“Members of the jury, one of the elements I have to prove is that Molly is below the age of 13. Molly told you she was only six; but even if she hadn't testified, you can tell from the photos of the crime scene how young she is. Officer Smith took these pictures and Molly told you this is how her bedroom looked the night dad 'licked her koochie.' Let's take a close look at the photos. Over on the nightstand we have a Mickey Mouse Clock. On the wall, there is a Precious Moments Calendar. On the dresser, there is an Esmeralda hair brush. The bedspread has a multi-colored balloon pattern. Clearly, a little girl used to live here—and anyone who entered this room would know how young, how vulnerable the child was.”

4. Crime scene photographs may introduce the jurors to the child's world

Some years ago, a roving exhibit of artifacts from the Titanic came to a museum in my home town. Friends who paid money to view the exhibit expressed their thrill in seeing a broken dish, a deck chair or other

artifacts rescued from the ship. Although the site of a wooden chair or broken dish would not normally produce any interest, the fact that they came from the Titanic connected these visitors to that historic moment. As a baseball fan, I felt a similar thrill when visiting a roving exhibit of the National Baseball Hall of Fame. Although a piece of cloth is not particularly interesting, the fact that the cloth was part of a baseball cap worn by Satchel Paige was very exciting. It is this excitement that leads collectors to purchase or grab bases, or even dirt or grass from hauled stadiums or from important games.

Although photographs of a child sexual abuse crime scene will not interest jurors in the same way, these photographs will, nonetheless, make the abuse more real. The photographs remind the jurors the case involves a real child, who lives in real world, and who has real experiences. In a powerful, personal way we can't fully explain but can nonetheless appreciate, the photographs connect the jurors to the child.

5. Crime scene photographs may assist the prosecutor in cross-examination

Crime scene photographs can be invaluable to a prosecutor cross-examining a defendant or other defense witnesses. In one case, for example, a father was intoxicated as he entered his teenage daughter's bedroom and raped her. After the sexual assault was complete, the teenage victim went to the local emergency room and reported the crime. Because of the prompt outcry there was significant medical and other evidence. Although the defendant declined to speak with the police, the evidence was overwhelming. Nonetheless, the defendant pled not guilty. At trial, the defense counsel waived his right to an opening statement and declined to

cross examine any of the state's witnesses. As soon as the government rested, the defense attorney called his client to the witness stand.

The defendant told the jurors it was true that he had sexual intercourse with his daughter and that he was not disputing any of the state's evidence. The sexual act, though, was an “accident.” The defendant told the jurors that he was, indeed, intoxicated and when he is drunk he gets sexually aroused. Accordingly, the defendant claimed he went up the stairs that night intending to have sex with his wife but he was so drunk he could barely see or hear and mistakenly walked into the wrong bedroom. In the dark, he said his daughter looked just like his wife. He said that as soon as he realized his error he stopped but that it was too late—he had already ejaculated. The defendant said he had checked into a chemical dependency treatment program and asked the jurors not to punish his daughter because of his alcoholism. He begged the jurors to let him go home and that he would “make things right.”



Armed with pictures of the crime scene, the prosecutor in this case might have a relatively easy cross examination. Starting with the picture of the victim's bedroom, the prosecutor could ask the defendant to point out all the things you would expect in a teenager's room—such as posters, CDs, unique bedding or chairs. The prosecutor can then show the defendant the photograph of the bedroom he shares with his wife and highlight the unique features of that room—such as the king size bed, the antique dresser, the walk in closet, etc. Highlighting the many differences between the two rooms will also highlight the absurdity the defendant could have gotten it wrong which room he was in.

As another example, consider sexual assault or neglect cases in which a child is confined in a closet, basement, or other unseemly setting. Using pictures of the crime scene, the prosecutor can highlight on cross examination the cruel nature of the location for the sexual assault or the confinement. A prosecutor could ask: Is there a bathroom in the basement? A television? A computer? Books? Games? Carpeting? A bed? A chair? Food? Water?

6. Crime scene photographs can bring to life events that happened long ago

In one case, a teenager told the police that her father had sexually abused her for years. The victim explained she was a little girl when the abuse began and that, prior to each sexual assault, her father would go into the garage to do woodworking. The child knew that, for her father, this was "foreplay." As a result, the girl would barricade herself into the walk-in closet in her bedroom and paint sailboats on the wall pretending she was sailing away to another land. Although years had passed, the police visited the crime scene, carefully scraped off the paint in the walk in closet—and found dozens of sailboats painted on the wall.

In another case, a 17 year old victim told the police that a man had sexually abused her five years before. The girl reported that at the time of the assault, she was obese with acne and was made fun of in the neighborhood. The girl said the defendant, an attractive young man, observed this and told her she was cute and he wanted to take her on a date. Instead, he took her to a junkyard and sexually assaulted her inside a rusted old pick-up truck. When the child reported the pick-up was still there, the officer took her to the junkyard to identify the vehicle. The pick-up was photographed and, in his closing argument, the prosecutor was able to make the following argument:

"Defense counsel argues it is significant this child delayed her disclosure for five years. The delay, however, is easy to understand. In pained expressions, this child told you jurors what her life was like five years ago—what she looked like and how people treated her. She told you how the defendant preyed on her feelings of inadequacy by telling her she was pretty and special. More than the abuse itself, how it must have hurt her when he took her here (displaying a picture of the crime scene). Because then she knew that, to the defendant, she was just another piece of junk. That's why it took her five years to talk about it."

7. Photographs may highlight the child's inability to protect him or herself

A picture of a child at or during the time of abuse may highlight the child's small stature. If the investigator can locate an old family photo album showing the child next to the defendant, the contrast in size will likely be great. Photographs like this will highlight the child's physical and emotional inability to protect him- or herself during the time the abuse was taking place. If the child disclosed abuse during a particular family event or outing, such as a camping trip, look

for family photographs of the event. These pictures not only document the event - thus proving the child's veracity as to this detail and documenting the defendant's opportunity to commit the crime—they also document the child's small stature. If there is a growth chart in the child's bedroom in which the boy or girl has marked their size at one or more years, photograph and seize the growth chart.

8. Video cameras can be used to document the crime scene from the perspective of the victim

When listening closely to a child's disclosure, the investigator can often find a way to photograph the crime scene that helps jurors understand the assault from the perspective of the victim. A video recording can often assist in this process. Assume, for example, the child describes being awake in her upstairs bedroom, with the door closed, watching a Scooby Doo video when she hears the sound of her father walking up the stairs. From the creak on the stairs, she knows from past experience he is about to violate her. In such a scenario, an officer may want to photograph, from the angle of the child's bed, the closed door and the television/DVD player where the video was playing. An investigator might also want to close the door and have a colleague, ideally of similar weight to the defendant, walk up the stairs. Use a video camera to document the creak on the stairs and the fact the creak is loud enough to be heard even when the door is closed and even when a video is playing. If the suspect is not yet in custody and is cooperative, have the alleged perpetrator walk up the stairs and video record the creak he causes in doing so.



9. Video cameras can be used to re-create the crime or highlight the absurdity of a defense

In addition to documenting the crime from the perspective of the victim, video cameras can be used to re-create one or more aspects of the crime. Investigators often employ this technique in physical abuse cases. In an abusive head trauma case in which a suspect claims a child fell from a sofa or was only given a “mild shake,” officers often ask the suspect to demonstrate with a doll how a child fell or the degree of force the suspect used in shaking the child. These videos can then be shown to a medical expert to determine the plausibility of the account and, of course, the tapes can later be shown at trial.

In some sexual abuse cases, video cameras can also be used to re-create a portion of the crime or highlight the absurdity of a suspect’s claim. The majority of research confirms that, when properly used, anatomical dolls are a helpful tool for children to explain their experiences.² Dolls or other tools can also be used when interviewing a suspect. For example, in a case in which a suspect claims

he did not sexually abuse his daughter but was instead checking to see if she was still a virgin, consider asking him to demonstrate his “examination” with two anatomical dolls. If the defendant denies sexual abuse but acknowledges doing something with the child’s body such as giving a bath, or the defendant acknowledges some form of sexual touching, such as fondling the child, consider having the suspect demonstrate the touching with anatomical dolls.

In the case discussed earlier in which the defendant claims he walked up the stairs intending to have sex with his wife but instead walked into his daughter’s bedroom and “accidentally” had sex with her, ask him to walk up the stairs as you video record his movements all the way into his daughter’s room. Ask him, on camera, to point out where his daughter was positioned and how, exactly, he accomplished the task of having intercourse with her. With a pair of anatomical dolls, consider asking him to demonstrate the conduct. At some point in the process, the suspect may realize how absurd the claim is and may simply confess.

10. Careful documentation of the crime scene, including photographs, sends a message to the victim that the government took the allegation seriously

On their death beds, each maltreated child we work with will remember at least two people—the person who abused them, and the person who responded to their report of abuse. Although investigators and prosecutors cannot guarantee a successful outcome for maltreated children brave enough to disclose, we can guarantee the allegation will be taken seriously.

In responding to their disclosures, we may help children appreciate the

sensitivity and thoroughness of those who hold the title of “child protection professional.” In the grand scheme of things, hard work that does not bring a successful outcome may mean very little. To a maltreated child, however, our success may not be as important as our effort. Because we can control our effort, not the outcome, it is the former that tells the child how much we care.

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² See Kathleen Coulborn Faller, *Anatomical Dolls: Their Use in Assessment of Children Who May Have Been Sexually Abused*, 14 JOURNAL OF CHILD SEXUAL ABUSE, 1, 13 (2005); Everson & Boat, *Putting the Anatomical Doll Controversy in Perspective: An examination of the Major uses and Criticisms of the Dolls in Child Sexual Abuse Evaluations*, 18 CHILD ABUSE & NEGLECT 113 (1994)

For More Information

The National Child Protection Training Center (NCPTC) at Winona State University is a training program of the National Association to Prevent Sexual Abuse of Children (NAPSAC). NCPTC provides training, technical assistance and publications to child protection professionals throughout the United States. In addition, NCPTC assists undergraduate and graduate programs seeking to improve the education provided to future child protection professionals. In partnership with CornerHouse, NCPTC also assists in the development and maintenance of forensic interview training programs utilizing the RATA[®] forensic interviewing protocol. For further information, contact NCPTC at **507-457-2890** or visit our website at **www.ncptc.org**. For further information about NAPSAC, call **651-340-0537** or visit our website at **www.napsac.us**.