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Organized Retail Theft Interviewing Conducting the Interview

In the July/August issue, we discussed the preliminary intelligence targets applicable to an organized theft investigation. Carefully utilizing the resources of store personnel to gather intelligence on the operational tactics of the ring allows the exterior phase of the investigation to begin with momentum. This information will also identify areas of inquiry for the interviewer when confronting lower level members of the ring.

Clearly, the goal of the investigation is to walk back from where it is first exposed, with the shoplifter, to the endpoint of the actual fencing operation. To do this there will be several information gathering opportunities that can be exploited by the interviewer.

- Observations of store personnel, mall employees, and witnesses
- Shoplifters
- Informants
- Customers of the fencing operation
- Fence's employees
- Fencing operator

Prior to beginning a mobile surveillance of an organized group, an evaluation of their tactics will assist in planning and allocating resources for the investigation. This first information target can be addressed using cooperative witnesses, such as store personnel, management, and customers, who provide intelligence information on the operational tactics of the shoplifters.

This interview should be designed to identify the *modus operandi* of the group. The interviewer's goal is to develop information and evidence about the suspects, their descriptions, pre-surveillance of the location, the theft itself, the getaway, and, finally, any counter-surveillance efforts in place.

Carefully documenting the ring's tactics can provide a unique fingerprint for the group that can link incidents, providing a geographic range for their operations. To begin the flow of information about the theft ring, the stores need to be alerted so that incidents matching the ring's tactics can be reported to the primary investigator.

Interviewing the Shoplifter

Being detained for retail theft often has a tremendous psychological and physiological impact on the shoplifter.

The apprehension may provide an opportunity to obtain information about the organization's operations from even the most hardened individual. The luckless offender now must face the reality of arrest, at best an inconvenience and at worse a life-altering experience. To know which for sure, requires a detailed follow-up interview with the individual.

Turning a shoplifter into an informant can potentially quickly advance an investigation. However, depending on the state, a shoplifting offense might never reach the \$1,000 to \$2,500 felony level, resulting in only a minor inconvenience to the booster and reduction of leverage for the interviewer.

When the interviewer opens other channels of information by networking with other ORT investigators and the local police, things can become more complicated.

As anyone who has made an apprehension knows, the attitudes of a detained shoplifter can vary considerably, from combative to morose. It is difficult to generalize approaches, but one thing is clear; without having some idea that an individual belongs to an organized group, there may not be a carefully conducted interview.

With only a fraction of shoplifters falling into the booster category, it is the group's "fingerprint," those operational preferences, which set them apart from the ordinary shoplifter. Thus, the first order of business is drilling down the group's fingerprint to the stores so that this association can be made.

Educating store-level personnel and the local police on the behaviors of the organized shoplifter is essential if they are to be identified. A recently released workbook by the National Retail Federation Foundation, entitled *Organized Retail Theft: Raising Awareness, Offering Solutions*, by Charles Miller, is a good place to start that education. The spiral-bound document is available from the NRF bookstore at www.nrf.com/bookstore.

One indication they may fall into the booster category may be their selection of easily disposed of product, such as DVDs,

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infant formula, health and beauty care products, razors, film, or high-end designer clothing. It might also be the quantity of items taken, excessive value stolen, or the methods used that draws one's attention to the fact this is not just an ordinary shoplifter.

The agent may also make an identification of a member of an organized shoplifting ring by their out-of-state ID or lack of identification carried, or their use of aliases and false biographical information.

If it appeared that a group was operating together to boost merchandise, they will often claim not to know one another, even though surveillance indicated they were seemingly acting in concert. Careful observation of those detained can often identify the individual in charge, which, if correct, could be a valuable piece of information for the interviewer.

When two or more suspects are detained at once, they should be separated and questioned alone. The uncertainty of what is being said by the other suspect and the likely contradictions in statements creates a distinct advantage for the interviewer. Until the suspect's stories match, there is a strong likelihood that there is still information being withheld. In our experience, it is much more difficult to confront a single suspect with limited information than it is to confront multiple suspects with limited information. Multiple suspects provide an interviewer the means to test their stories, facts, and alibis against each other to determine the truth.

Who Should Conduct the Interview?

Geographically this may pose some challenges since the lead organized retail theft (ORT) investigators may be miles from the apprehension. It is often easier for a third party to do an interview with the shoplifter than it is for the agent making the apprehension. So what are the alternatives?

The first alternative is to have the agent making the apprehension conduct the follow-up interview, since this is most convenient and expedient. There may be inherent difficulties in this choice as a result of the apprehension or the inexperience of the agent doing the interview.

The primary ORT investigator should have developed a series of informational targets for the store agent to follow. In most instances a careful briefing of the agent highlighting the areas to be covered results in a more thorough examination of the witness or booster. Simply said, what is apparent and important to the primary investigator may not be apparent to those with only a limited perspective of the investigation.

Even an inexperienced agent may have some success just because the individual is in a state of shock from being detained. A preprinted interview form is a poor way to do the job, but at least the new interviewer will hit the correct topics, although the results are likely to be spotty at best. One can always argue that something is better than nothing.

The second possibility is to have the loss prevention manager conduct the interview with the suspected professional booster. Generally the more experienced manager can approach the suspect using the same skills and tactics that would be used during a dishonest associate interview.

Using rationalization, the interviewer allows the suspect to save face, focusing not on his apprehension, but the extent of the individual's illicit activities. The goal should be intelligence information about the group's operation and the ultimate destination of the stolen product.

Clearly, there is a limited amount of time to conduct the interview before the police arrive to transport the shoplifter. However, the shock of the detention can sometimes help in quickly opening a dialogue with the booster.

A third possibility is using the telephone to have the loss prevention manager or lead ORT investigator conduct the interview. In most cases it is preferable to have a more experienced interviewer do a phone interview than have a less experienced agent conduct one in person. At the very least the lead investigator can determine the individual's resistance and perhaps pave the way for a follow-up conversation at the police department. This may be especially appropriate in instances where the suspect uses language difficulties to thwart store agents or local police attempts to interview them.

Finally, there is the interview at the police department or county jail, which may prove much more fruitful. By then the suspect and his vehicle may have been searched and additional evidence recovered. Armed with this new information, an interview will often be more successful as the suspect's exposure widens.

Involving the Police

When the interviewer opens other channels of information by networking with other ORT investigators and the local police, things can become more complicated. Knowledge is power and a police investigator who is aware of the possible scope of the crime may be willing to give attention to an arrest that would have otherwise been considered routine.

Creating a point of contact with the police early in the investigation may give the interviewer access to past arrest information and alert patrol officers and detectives to the scope of the problem. However, this may also change the rules of the investigation for the interviewer.

An aware patrol officer not only adds another skilled set of eyes, but may also prove a vital link to the investigation if an apprehension is made in another company's store. The patrol officer, knowing the signs of an ORT operation, interviews the detained shoplifter thoroughly and does not simply process the individual for court.

The arrest of an organized theft ring's shoplifter is where the conspiracy is most often first exposed. The operant word here is *arrest*. In most instances, the detention of a shoplifting suspect by store personnel is effectively a citizen's arrest because it lacks government authority. Therefore, Miranda warnings are not required prior to the interview. The company interviewer is free to explore and develop information with the suspect until the suspect is turned over to police.

Once the transfer to police takes place, the rules change. Now, the interviewer will likely be considered an agent of

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employment reference policy. Internal audits or HR might audit a certain percentage of new employee files to determine if store managers are conducting the requisite background checks.

Conclusion

The providing of employee references and the hiring of employees present both opportunities and challenges for merchants. It is an opportunity to find great employees and a challenge to avoid hiring non-productive, untrustworthy, and possibly even dangerous employees. It may be an opportunity to solidify relations with good employees and keep them as future customers who are moving on for a variety of reasons. And it may be a challenge to effectively disassociate from non-productive and higher risk employees.

The role of the LP program is to help manage these risks. It can be most effective in working in concert with other vested departments in developing appropriate protocols. ■

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the police and the suspect must be advised of his Miranda warnings. The failure to advise a suspect in custody of his warnings may render any subsequent statements inadmissible at trial and possibly lead to the suppression of derivative evidence.

The key here is *police custody* and the police officer's inclusion into the company's investigation. A company interview with the booster following his being taken into custody by police could be suppressed by the court because the interviewer may be seen as effectively acting as an agent of the police. So, unless the suspect has received his Miranda warnings prior to the in-custody interview, and waived them, any statements and potentially any evidence discovered as a result of the interview could be suppressed. Improperly obtained evidence, becomes the "fruit of the poisonous tree" and will generally be suppressed unless it can be shown that its discovery was inevitable through other means.

Finally, after his arrest by police, should the suspect invoke his right to silence or request an attorney, all questioning must immediately cease. In general, neither public nor private interviewers are allowed to attempt to persuade the suspect to change his mind about invoking his rights. However, the suspect can later change his own mind and agree to talk. Most officers will then repeat the Miranda warnings making sure the suspect understands the implications of the waiver. Whether or not any subsequent statements will be admissible will be determined by the court's review of how the individual's change of mind occurred and whether the suspect's waiver was voluntary.

This presents the question of whether Miranda warnings are required if the interview takes place in jail after the suspect

is processed by the police. The answer is, "It depends." A follow-up interview done in jail, after the suspect is charged, will likely be viewed in light of at whose direction the interview was conducted. If the company interviewer acted at the behest of police or if the police were significantly involved in the investigation at the time of the interview, then Miranda warnings would likely be required. However, if the interview was conducted totally independent of the police, then the interviewer is acting as a private citizen, and even though the suspect is in custody, Miranda is not required.

But there is another issue regarding Miranda warnings and the subsequent interview which must be considered. Required Miranda warnings are incident specific. So, if the suspect is in custody for a burglary and invokes his right to silence about the burglary, he may still be questioned about a related murder for which he is not in custody and has not invoked his rights. Thus, a shoplifter who invoked his rights about the current theft may still be questioned about other crimes for which he is not under arrest. So, it would be improper to question the suspect about the circumstances surrounding the theft and apprehension, but it might be acceptable to question him about the organization to which he belongs and any related criminal activity.

Each investigation into organized retail theft groups will likely involve the authorities at some point in the inquiry. Recognizing that the rules may change as government agencies become involved may help the company determine when it is appropriate to bring them into the investigation. Careful investigation and interviewing prior to police involvement can often offer a more flexible approach to the resolution of the case. ■