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DOI <https://doi.org/10.32849/2663-5313/2023.1.10>**Iryna Soroka,***PhD in Law, Lecturer at the Department of Criminalistics and Forensic Medicine, National Academy of Internal Affairs, 1, Solomianska square, Kyiv, Ukraine, postal code 03035, sorokairyna@ukr.net***ORCID:** [orcid.org/0000-0003-1536-6745](https://orcid.org/0000-0003-1536-6745)Soroka, Iryna (2023). Organisation and tactics of investigative experiment on facts of juvenile theft. *Entrepreneurship, Economy and Law*, 1, 58–67, doi <https://doi.org/10.32849/2663-5313/2023.1.10>

## ORGANISATION AND TACTICS OF INVESTIGATIVE EXPERIMENT ON FACTS OF JUVENILE THEFT

**Abstract. Purpose.** The purpose of the article is to characterise the particularities of organisation and tactics of an investigative experiment on the facts of theft committed by juveniles. **Results.** In the context of Ukraine's integration into the European Community and the deterioration of the socio-economic situation, there has been a significant decline in living standards and social protection of the population and a rise in unemployment, which affects the state of affairs in the crime situation in the country. Nowadays, crime has reached its highest level in the history of the independent state. The Constitution of Ukraine enshrines the inviolability of private property rights and the inviolability of housing from any unlawful encroachment. In view of this, ensuring the protection of private property and its defence against criminal encroachments is one of the priority tasks of law enforcement bodies. However, the high level of criminalisation of the population of Ukraine, the lack of qualified personnel in law enforcement bodies, the destruction of the crime prevention system, and the poor quality of crime detection and investigation have enabled a significant increase in the number of property thefts, especially those committed by juveniles, which are becoming increasingly dangerous. The article emphasises the particularities of conducting an investigative experiment on the facts of property theft committed by juveniles. The author emphasises that in order to ensure the reliability of the conclusions obtained during research activities, it is necessary that the conditions under which the investigative experiment is conducted are as close as possible to those in which the event under investigation took place. In addition, it is necessary to ensure that the experimental actions, which sometimes need to be performed many times and with appropriate variations, are reconstructed in a complete and accurate manner. **Conclusions.** The author concludes that an investigator should be critical of the results of an investigation in general and in particular. Despite the fact that in the organisational and tactical aspect this procedural action is quite complex, it is indispensable with any other investigative (search) action. In addition to the records, it is advisable to record the proceedings with the help of photos and video. Each procedural action should be carried out at a high level. This will ensure the collection of as much evidence as necessary for impossibility to question the involvement of the relevant persons in the crime.

**Key words:** theft, juvenile, organisation, tactics, investigative experiment.

### 1. Introduction

An investigative experiment is of no less importance for establishing the circumstances of the incident at the subsequent phase of the investigation of property thefts committed by juveniles. Determining the moment of its conduct, along with other investigative (search) actions, can significantly affect the results of establishing all the circumstances of criminal proceedings. Despite the fact that this procedural action has been under focus by forensic scientists, some of its features in cases of property theft committed by juveniles require additional attention. Frequently, it is difficult and sometimes impossible to establish the circumstances of a criminal offence without conducting an investigative experiment.

On the other hand, the number of investigative experiments conducted on crimes under study is, in our opinion, insufficient. For example, the study of forensic practice reveals that the investigative experiment is conducted to establish: 1) the sequence of development of a certain event and the mechanism of the crime or its individual elements (57 %); 2) the ability to perform an action in certain conditions – to penetrate a small opening, climb over a fence (37%); 3) the ability to observe or perceive a fact or phenomenon in the appropriate lighting conditions from a certain distance, to hear sounds (27%); 4) the presence or absence of relevant professional skills and abilities of a particular person may be checked to verify the ability of a juvenile to open or break

locking devices – 3%; 5) the ability to perform certain actions within a certain time – 3%.

An investigative experiment is also worthy of attention, as it is conducted by recreating the actions, environment, and circumstances of a particular event. Forensic practice determines its conduct in 16 % of cases out of the total number of investigative experiments conducted by investigators. We believe that this procedural action should be used by investigators on a wider scale, which will ensure that the evidence necessary to establish the circumstances of a criminal offence is obtained. In our opinion, the abandonment of the investigative experiment is due, among other things, to the fact that investigators experience difficulties in the organisational and tactical aspects of its conduct with the participation of persons under the age of majority. Therefore, we consider it appropriate to highlight the particularities of conducting an investigative experiment on the facts of property theft committed by juveniles.

Theoretical and practical issues related to the investigation of theft crimes committed by juveniles have been addressed by well-known domestic and foreign scholars in various fields, in particular: L.P. Bakanova, V.D. Bernaz, P.D. Bilenchuk, V.V. Biriukov, A.F. Volobuiev, O.Yu. Drozd, O.A. Kyrychenko, A.A. Kravchenko, O.V. Kravchuk, M.N. Kurko, Ye.I. Makarenko, Z.I. Mytrokhyna, H.Ye. Morozov, N.I. Nykolaichyk, S.O. Pavlenko, S.Ye. Petrov, B.V. Romaniuk, V.H. Sevruck, P.N. Sydoryk, S.M. Stakhivskyi, Yu.D. Fedorov, Yu.V. Tsyhaniuk, M.H. Shcherbakovskiy, A.I. Yuryn, and others.

The purpose of the article is to characterise the particularities of organisation and tactics of an investigative experiment on the facts of theft committed by juveniles.

## 2. Investigations into thefts

In order to verify and clarify information relevant to establishing the circumstances of a criminal offence, the investigator or prosecutor shall conduct an investigative experiment by reconstructing the actions, situation, circumstances of a particular event, conducting necessary experiments or tests.

While the criminal procedure legislation defines this investigative (search) action as an investigative experiment, the forensic literature distinguishes two forms of it: an investigative experiment, and verification and clarification of testimony on the spot. This requires to distinguish between their tactical features in the investigation of thefts of other people's property committed by juveniles.

During an investigation into property thefts committed by juveniles, the investiga-

tor shall conduct a comprehensive examination of all possible evidence in order to confirm or refute the involvement of the person. In many cases, objective verification and assessment of the evidence obtained is possible only during an investigative experiment, which allows the investigator to legally verify the reliability of the information obtained during the investigation, the correctness of his or her hypotheses and conclusions, as well as to recreate the picture of the event in its entirety, allowing for the interrelationships, various details and features. The success of this procedural action largely depends on how well the investigator plans the experimental actions. In addition, when investigating thefts of other people's property committed by juveniles, investigators do not fully use the possibilities of an investigative experiment, and in the course of its conduct, mistakes are often made that do not allow the results to be used in court.

As with any investigative (search) action, the procedural action in question is preceded by preparation. Preparation for the investigative experiment in criminal proceedings on the facts of property theft committed by juveniles is a comprehensive study of the materials, outlining the range of persons to be involved, and clarifying the circumstances that need to be established in the course of the investigative (search) action. Moreover, the investigator decides what additional items (dummy, model, etc.) should be used during the investigative experiment.

Recently, the forensic literature has identified eight organisational issues that need to be addressed during preparation: 1) detailed questioning of all circumstances related to the place of interest; 2) determination of the most favourable time for the investigative action; 3) preparation of the investigative team; 4) preliminary familiarisation with the place; 5) if necessary, measures taken to ensure the safety of participants and additional security of the person whose testimony is being verified; 6) preparation of transport and technical means; 7) preparation and testing of the means of communication between the investigator and the district department (office) of the MIA; 8) a plan of investigative (search) action (Karahodin, Nikitina, Zashliapin, 2003, p. 33).

In addition, it should be considered that a delay in conducting an investigative experiment may lead to a loss of psychological contact with the suspect, who has already been interrogated and whose testimony will be verified.

This, in turn, will complicate the conduct of the investigative experiment and negatively affect the achievement of positive results.

In our opinion, the participants in these procedural actions should be considered. Undoubtedly,

the main figure who directly conducts the investigative experiment is the investigator. In practice, prosecutors do not exercise their right to conduct procedural actions, including investigative experiments.

It should be noted that investigators do not entrust the conduct of the investigative experiment to employees of other units. The study of forensic practice does not reveal any case of an investigative experiment conducted by officers of operational units. The explanation for this may be that this procedural action is complex in organisational and tactical aspects and requires appropriate expertise and knowledge, and its results may be of importance to the investigation. The latter can be both negative and positive. Aware of the negative results that may be obtained with a high probability during the conduct of this investigative (search) action by employees of operational units, investigators refuse to order its conduct.

In accordance with the current criminal procedure legislation of Ukraine, the investigator is the leader and organiser of the investigative experiment (Honcharenko, Nora, Shumylo, 2012). It is the investigator who checks various versions in order to establish the factual data obtained as a result of interrogation of a suspect, witness, victim, and other investigative (search) actions.

In order to conduct a comprehensive investigative experiment, the investigator is authorised to invite a specialist who will help the investigator study in more detail the specific phenomena, signs and condition of various objects.

Providing explanations and consultations, a specialist should not go beyond his/her competence, substitute an expert and not establish new facts of evidentiary value in criminal proceedings.

On behalf of the investigator or prosecutor, a specialist may take measurements, photographs, sound or video recordings, draw up plans and diagrams, make graphic images of a place or individual things, make prints and casts, inspect and seize things and documents relevant to criminal proceedings. A specialist involved in an investigative action has the right to make statements that are to be entered into the records of this investigative action (Honcharenko, Nora, Shumylo, 2012).

In order to ensure the reliability of the conclusions obtained during research activities, it is necessary that the conditions under which the investigative experiment is conducted are as close as possible to those in which the event under investigation took place. In addition, it is necessary to ensure that the experimental actions, which sometimes need to be performed many times and with appropriate variations, are reconstructed in a complete and accurate manner.

The person with whom the experiment is conducted is given the opportunity to accompany his or her testimony with a demonstration of certain actions, skills, indicate the location of caches, traces, certain signs or marks that help orientation, etc.

In order to clarify certain important details, fill in gaps, and eliminate contradictions after a free narrative and demonstration, the investigator has the right to ask the person giving evidence about the circumstances of a particular event. Leading questions are not allowed (Belkin, 1997, p. 36).

During investigative actions, it is advisable to use the same instruments, mechanisms, devices and materials that were used in the commission of crimes. It is inappropriate to use objects that are material evidence in the proceedings during experimental actions, due to the possibility of their destruction or damage. If it is not possible to use these objects in the experiment, the investigator may use analogue objects or full-scale models. This may in some way affect the psychological positions of the offenders and cause them to experience feelings similar to those they experienced during the commission of the offences, which may contribute to a sincere confession.

Directly at the place of the investigative (search) action, the investigator or prosecutor must explain to its participants the purpose and procedure for performing experimental actions, explain the rights and duties of each person present; ask the person, whose testimony will be checked, or the suspect, whether they agree to participate in the investigative action; explain their constitutional right not to testify against themselves and their close relatives (Article 63 of the Constitution of Ukraine, Article 18 of the CPC of Ukraine). Witnesses and victims who have reached the age of criminal responsibility are warned of criminal liability for giving false testimony, and the witness is also warned of criminal liability for refusing to testify (Honcharenko, Nora, Shumylo, 2012).

This can be greatly facilitated by the involvement of persons such as psychologists or teachers in the investigative experiment.

Forensic practice shows that specialists were involved in the conduct of the investigative experiment in 31% of cases. At the same time, psychologists were involved in 64% of cases and teachers in 36% of cases during procedural actions involving juveniles.

However, a suspect's consent to participate in an investigative experiment should also be viewed critically. This is especially true when the suspect is in custody and expects to escape, influence accomplices, or destroy possible traces during the investigative (search) action. There are cases when sus-

pects request that an investigative experiment be conducted with their participation. In each case, it is advisable for the investigator to try to answer why the person voluntarily agreed to participate in the investigative experiment. It is possible that the person who is subject to the investigative experiment may later take the position of an unfair participant.

The investigator should not hope that the investigation is conducted with a juvenile who confesses to the offence and no problems can arise.

Frequently, this is the main mistake of investigators who, being in favourable conditions, are slow to conduct investigations. The lack of critical attitude to the evidence and other materials of the proceedings does not contribute to the comprehensiveness of the latter. As a result, the investigation becomes a formality. If a juvenile denies involvement in a criminal offence, the criminal proceedings "fall apart like a house of cards" because the suspicion is based on the testimony of this person, and there is neither additional evidence nor sufficient evidence to convict.

The pattern we have given is quite common in legal practice. For example, during the pre-trial investigation, a juvenile confesses, which leads to the investigator's vigilance being lulled and sloppy investigation. In court, the defence claims that law enforcement officers used coercive measures to obtain confessions. As a result, judges decide to return the criminal proceedings for additional investigation. As no traces of witnesses can be found over time, it becomes impossible to prove the guilt of the offenders. As a result, juvenile offenders avoid responsibility and continue to commit more serious and brazen criminal offences.

Therefore, we believe that every procedural action in general and the investigative experiment in particular should be conducted at a high level. This will ensure the collection of as much evidence as necessary for impossibility to question the involvement of the relevant persons in the crime.

The investigative (search) action in question must be carried out qualitatively, finding out all the circumstances of the actions taken, carefully recording the progress and results.

Another category of participants in an investigative experiment, attesting witnesses, should be considered. Unlike other investigative (search) actions, during which the number of witnesses usually does not exceed two, during investigative experiments the number of witnesses may vary. In general, the number of attesting witnesses during an investigative experiment depends on the number of places where the event that is the subject

matter of the investigative experiment must be perceived simultaneously. If the possibility of hearing a gunshot by people in four different locations is being tested, then there should be at least four attesting witnesses (Belkin, 1997, p. 37).

The focus should be on determining the circle of attesting witnesses during an investigative experiment with juveniles in multi-episode criminal proceedings.

For example, the investigator can involve witnesses who will participate in several investigative experiments consecutively or involve attesting witnesses for each experiment separately.

Each of these methods has both advantages and disadvantages. For example, if the same attesting witnesses are involved in all episodes, the investigator runs too much risk. This is due to a number of reasons: attesting witnesses may leave the locality, the state, or be influenced by parties concerned. As a result, it will be impossible to interrogate the attesting witness on the fact of his/her participation in the investigative experiment.

It should be noted that we are considering a situation where an investigative action is carried out with one person. That is, for each participant with whom an investigative experiment is conducted, different attesting witnesses are involved.

Attesting witnesses, by their procedural status, are specific witnesses to the actions of the investigator (prosecutor) aimed at identifying or verifying evidence. Attesting witnesses testify to the objectivity of the content of investigative acts, compliance with the content of the law, and the sequence of procedural actions taken by the investigator. If necessary, the testimony of attesting witnesses may serve as a source of information about facts related to the investigator's activities in criminal proceedings.

Eyewitnesses and victims may participate in the investigative experiment. Their role is to help the investigator (prosecutor) correctly reconstruct the situation of the event they witnessed and provide the necessary explanations about the course of the event. In cases where an investigative experiment is conducted to verify the testimony of witnesses, they may personally demonstrate certain actions, i.e. directly participate in the experiments. However, it would be wrong to categorically require the participation in the experiment of a witness or other person whose testimony is being verified experimentally. Not to mention that this requirement does not stand up to criticism from a procedural perspective. It should be noted that in some cases, the participation of these persons can only distort the results of the experiment.

Witnesses involved in an investigative experiment can be divided into witnesses to the fact under investigation and witnesses to the investigator's actions, that is, persons who performed the duties of attesting witnesses during other investigative actions (usually examination). The latter are involved in the experiment when it is to be conducted in an environment as similar as possible to the scene of the event in which the attesting witnesses were involved.

Furthermore, the experiment can be conducted in the absence of the person whose testimony is being verified, and in some cases it is not necessary to conduct it at the same place where the event under investigation took place (Salt-evskiy, 2001, p. 225). For example, if the ability of the juvenile to open the door lock of the car from which he or she committed the theft is checked, it does not matter whether the vehicle is located near the police station or at the scene of the criminal offence.

Sometimes it is difficult for investigators to determine when an investigative experiment can be conducted without the participation of a juvenile offender. For example, if the investigative experiment is not related to the testimony of the suspect, the latter is usually not involved in this investigative action (Ruban, 2009, p. 80).

Participation in an investigative experiment cannot be compulsory for a suspect. The investigator may not force the suspect to perform certain actions in the course of the investigative experiment against his or her will. Moreover, an accused or suspect who denies committing a particular act cannot be forced to perform that act during the experiment (Chernenko, 2004, p. 105).

The defence counsel may also participate in the investigative experiment. It is known that the defence counsel shall use all remedies and methods of defence specified in the law in order to clarify the circumstances that acquit the accused or mitigate his/her responsibility, and to provide the accused with the necessary legal assistance (Article 46 of the CPC of Ukraine). One of such remedies is the participation of a defence counsel in certain investigative actions, including investigative experiments (Belkin, 1997, p. 36).

The following types can be distinguished: to determine the possibility of observation, perception of a fact or phenomenon; to determine the possibility of performing a specific action; to determine the possibility of the existence of a phenomenon; to determine the details of the mechanism of the event and to determine the process of formation of traces of crime (Belkin, 1964, p. 223).

Along with checking the possibility of the thief committing any actions, the investigator's versions of the possibility of perceiving

a fact or phenomenon with the help of human senses under certain conditions can often be checked and evaluated (for example, whether an eyewitness to the theft, who has recognised the thief, to see and remember his facial features, taking into account a certain distance or degree of illumination, etc.) (Makarenko, 2010, p. 35).

If the essence of the investigative experiment is to obtain factual data by experimental means, the prerequisites for its conduct are: a) the need to obtain relevant factual data; b) the availability of data that such data will be obtained by experimental means; c) the impossibility of obtaining them by other investigative actions; d) the possibility of reconstructing the conditions in which the real event took place (Kotiuk, 2013).

For tactical reasons, the following rules should be followed to ensure the objectivity of the results of the experiment: 1) Conditions and environment should be as close as possible to those in which the event occurred (at the same place and time, in the same environment, using the same or similar tools and means used in the commission of the crime), which ensures the objectivity of its results; 2) The conditions that cannot be reconstructed should be taken into account; 3) The participants in the investigative experiment should be determined, taking into account which persons' participation in this investigative (search) action is mandatory; 4) The number of attesting witnesses should be involved depending on the conditions of the experiment; 5) The participants should be arranged exactly as they reported it; 6) Experiments should be repeated several times, changing their conditions (simplifying or complicating them) in order to exclude the possibility of an accidental result; 7) Experimental actions should be carried out in phases, which facilitates the perception of the experiment in all its details, facilitates the evaluation of both the experiments and the results achieved, and contributes to the accurate and complete recording of its course and results (Panov, Shepitko, Konovalov, 2003).

The investigator shall take the following organisational measures at the site of experimental actions:

- preliminarily inspect the place of investigative actions, establish the changes that occurred before the investigative action, organise the protection of the place of the investigative experiment and ensure the safety of its participants;
- record the environment in which the experimental tests will take place;
- remove all unauthorised persons who are not directly related to the experiment from the scene of investigation;

- check the compliance (similarity) of the conditions of the investigative experiment with those in which the event to be checked took place;

- if necessary, carry out a new reconstruction of the situation;

- explain to all participants of the investigative experiment their rights and duties;

- hold an instructional meeting among all participants of the investigative (search) action (in particular, to explain the purpose and content of the examination, the procedure for experimental actions, the responsibilities of the participants, to warn about the inadmissibility of disclosing the data of the investigative experiment, etc.);

- determine the means of recording the investigative action and the methods of communication between the participants of the investigative experiment;

- determine the procedure for the experiment.

After all the necessary organisational and preparatory measures, the investigator invites all participants in the investigative action to take designated places and, in accordance with the tasks, type and content of the tests, proceeds to the working stage of the investigative experiment (Konovalova, 2008).

If necessary to establish the content of a certain fact or circumstance or the process of their origin, for example, how a certain event or its traces appeared, the results of such an experiment can be either probable or possible. Moreover, if the experimental actions have established the only possible variant of the development of the event, then such an outcome is probable, and if the results of the experiment give grounds for concluding that the content of the circumstance or the process of its occurrence could have had different variants, then such an outcome is only possible (Panov, Shepitko, Konovalov, 2003).

According to K.O. Chaplynskyi, experimental actions with the participation of several criminals at the same time is unacceptable, as it entails the possibility of coordination between them of their positions and actions. In addition, the explanations of one participant in the experiment will be indicative in respect of others (Chaplynskyi, 2010). It should be noted that persons under the age of majority are prone to the suggestibility. Therefore, one juvenile with stronger moral, volitional and physical traits can influence others with weaker ones. This, in turn, will inevitably lead to mistakes and the impossibility of establishing the circumstances and role of each participant in the criminal offence.

R.S. Belkin proposes to use as a tactic a combination of an investigative experiment with

the study of the environment or objects mentioned in the testimony, as well as traces indicating the person's presence in this place (Belkin, 1966, p. 200).

The tactic of combining a story and showing the situation by the person whose testimony is being verified is based on the regularity of the psychological impact of the situation on this person, who is repeatedly at the scene of the event, which contributes to the recollection of the forgotten. We advocate V.O. Konovalova that such clarification helps the investigator to form a more accurate and complete picture of the event that took place (Konovalova, 1978, p. 19).

Since the investigative experiment examines the material situation at the scene, this procedural action should include tactics designed to work with material sources of evidence. Referring to the term "tactic", V.Y. Shepytko considered it as a method of procedural action aimed at achieving a specific goal, based on the psychological mechanism of implementation, which is the most rational and effective in the relevant situations (Shepytko, 2001, p. 107).

In our opinion, during this investigative (search) action, in accordance with its purpose, certain tactics of examining the scene may be used. In particular, during the verification of testimony on the spot, the tactic of examining the scene - the analysis of individual traces (objects) - can be used.

Therefore, the investigative experiment is a specific investigative (search) action, during which both material sources of information and ideal traces (traces of human memory) interact. Accordingly, during an investigative experiment, tactics are used to work with both material sources of information and a person. Therefore, the investigative experiment is characterised by a variety of tactics used during its conduct and has a rather large evidentiary value in court proceedings, which, unfortunately, is not always used by pre-trial investigation authorities in a timely manner.

The timing of an investigative experiment is determined by a number of factors. By conducting an investigative experiment prematurely, the investigator can expose the available evidence to the criminals. If the investigator is late in choosing the right time, he or she will not receive the necessary information. This will affect the ability of juvenile offenders, including with the help of defence attorneys, to develop a line of defence, form an alibi, or leave their place of residence. The above fully applies to juveniles who are sent by their parents to other regions of our country or to relatives abroad. Given the current relations between our countries, criminals expect to avoid extradition.

The next circumstance that the investigator should consider is whether all participants in the criminal offence have been identified and their positions taken. For example, if all participants in the criminal offence have not been identified, the investigator should be careful about the possibility of exposing a person who cooperates with the investigation. This can lead to pressure on a bona fide participant and his/her refusal to cooperate with law enforcement bodies. The time of the investigative experiment should be chosen in this way that none of the accomplices can see the juvenile with whom the procedural action is being carried out.

The above circumstances should be observed by investigators during an investigative experiment in the investigation of property thefts committed by juveniles.

### **3. Reconstruction of actions, environment, circumstances of a particular event**

Another form of conducting an investigative experiment, namely by reconstructing the actions, environment, and circumstances of a particular event, is also noteworthy.

The actions, environment, and circumstances of a particular event are reconstructed with the person who directly perceived the event. The actor reveals an imaginary method by demonstrating (showing) it on real objects of the material environment in the same place. In an investigative experiment, on the contrary, examination actions constitute its essence and serve as a method of obtaining and verifying information.

Investigative (search) actions in cases being analysed are extremely important, as they are carried out with witnesses if the crime scene (for example, identification of the area) should be established, weapons, clothing and other items abandoned by criminals after committing a crime should be identified; and with victims, if the picture of the crime should be fully reconstructed (Hlyncov, 1971).

According to K.O. Chaplynskyi, verification of testimony on the spot is an investigative action that consists in comparing testimony about the circumstances of a crime related to a certain place with the actual situation at that place, shown to the investigator in the presence of attesting witnesses by the person who gave the testimony, in order to establish their reliability (Chaplynskyi, 2010).

This classification should be considered in the investigation of property thefts committed by juveniles in the first place in cases where a socially dangerous act is committed in a group, but later one or more participants take the blame, or there are contradictions in the testimony of accomplices.

For example, if certain testimonies are found to be inconsistent with other materials of the criminal proceedings, the investigator may be asked to determine the reasons for the relevant circumstances and the ways to resolve them. In this and other cases, the investigator may conduct the investigative (search) action under study.

In accordance with the established procedure, a prerequisite for the verification and clarification of testimony on the spot is the preliminary interrogation of the person whose testimony is to be verified. Some forensic scientists believe that preparation for the verification of testimony on the spot should begin during the interrogation and inspection of the scene (Uvarov, 1982, p. 15).

One cannot disagree with this, since already during the interrogation, the investigator thinks several steps ahead and is not limited to conducting a particular investigative (search) action. In some cases, the analysis and evaluation of the results obtained may begin as early as during the course of the procedural action. This has a significant impact on the course of the proceedings. For example, not only the circumstances of the event are clarified, but also the possibility of their reconstruction with a particular participant.

In addition, it is advisable to offer him/her to draw up a detailed diagram, which would also indicate the circumstances relevant to the case; the route to the place of theft, the place of entry into the apartment, the particularities of the housing environment, from which places and in what sequence certain valuables were taken, the route of escape from the place of theft, etc. The coincidence or difference between the details of this diagram and the diagram made as a result of the on-the-spot testimony (especially with each of the accomplices) to some extent indicates that the suspect's testimony is true or false (Makarenko, 2009, p. 96).

Frequently, criminals recant their testimony in court during the pre-trial investigation, mentioning the influence of law enforcement officers. It will be much more difficult for a criminal to convince the court of violations during an investigative experiment if there is a video recording of its conduct. For example, a tactically correct procedural action entered in the records and its annexes will not leave or significantly reduce the chances of the perpetrators avoiding criminal liability.

In cases when the verification of on-the-spot testimony reveals caches with stolen goods, places where thieves left their tools, clear and logical coverage of the criminal offence cannot be considered only as a repetition of on-the-spot testimony and "self-deception". In this

case, the investigator and other participants in the procedural action are convinced not only that the person has information about the criminal offence, but also that he or she is possibly involved in it. That is, if during the reconstruction of the circumstances of the event, the juvenile demonstrates hiding places, tools that were not found during other procedural actions, highlights the mechanism of the commission, circumstances that can only be known to a person who experienced the relevant event and did not hear from someone else and takes the blame of the perpetrator, a reasonable assumption can be made about the involvement of the person in question in the fact under investigation. This is of particular importance when investigating thefts committed by juveniles. The latter are quite easily influenced, manipulated, mistakenly perceive friendships, wish to appear necessary and gain authority among peers or in a group. The above should be taken into account by the investigator and can be detected, first of all, during the investigative experiment.

It is not difficult to see the incompetence of a juvenile at the scene. This can be manifested in confusion, difficulties in determining the ways of approaching and leaving the scene of the theft, details that do not match the real picture of the scene, etc. A common truth of detecting falsehoods in the testimony of persons is the need to cover the event in detail. The inability to provide details and superficial coverage of the circumstances of the criminal offence should raise reasonable doubts about the person's involvement in the event.

For example, it is possible that a juvenile is confused in testifying in multi-episodic proceedings, when some facts are superimposed on others. This can be especially evident in the case of thefts of other people's property by similar means, in similar circumstances, for example, from the houses of garden associations, private households. The investigator should take this circumstance into account when assessing the results of this procedural action.

Investigating thefts committed by juveniles requires tactical competence on the part of the investigator. The investigator shall artificially reconstruct an environment that will encourage a person to voluntarily perform actions that reveal the content of information known only to him or her, in particular, about the preparation, commission and concealment of crimes, the existence of a previous criminal conspiracy, etc. (Saltevskiy, 2001, p. 234).

In addition, viewing the video recording can help to identify the emotional manifestations and reactions of the juvenile to the relevant circumstances of the place of the investigative experiment.

Of great importance during the investigative (search) action under study is the use of means of recording its course, the main of which is the records. According to D.D. Zaiets, it should reflect the following data: routes of arrival at the place of reconstruction of the situation and circumstances of the event and the content of the testimony to be verified; the content and nature of the actions of the participants to clarify the testimony and their results (Zaiets, 2008, p. 219).

The quality of the records should not raise any doubts about the legality of the investigative experiment. It should be noted that investigators may make mistakes in drafting a procedural document. A properly conducted experiment, but an incorrectly drawn up records based on its results, cannot be given due weight in criminal proceedings.

In addition, the use of additional means of recording and writing of relevant annexes during the investigative experiment should be under focus.

The study of forensic practice did not reveal any cases of video recording during the investigative experiment on the facts of investigations into property thefts committed by juveniles. At the same time, in all cases, photography was used and photo tables were compiled.

We believe that the course of an investigative experiment with a juvenile should be entered in the records and with the use of photo or video recording. In the records of the investigative experiment, drawn up personally by the investigator, the latter determines the final wording of certain issues resolved by the investigative experiment. Correct recording of the results of an investigative experiment requires the investigator to know the accepted terminology, attention, observation, lack of bias, ability to think logically, and a critical attitude to the results obtained.

The choice of the moment of conducting an investigative experiment should allow for the circumstances of the crime, the current investigative situation, the availability of collected evidence, etc.

A person subjected to an investigative experiment may recant his or her testimony in court, so the quality of the experiment and its recording should not raise any doubts about the involvement of the relevant persons in the crime.

#### 4. Conclusions

The investigator should be critical of the results of an investigation in general and in particular. Despite the fact that in the organisational and tactical aspect this procedural action is quite complex, it is indispensable with any other investigative



(search) action. In addition to the records, it is advisable to record the proceedings with the help of photos and video. Each procedural action should be carried out at a high level.

This will ensure the collection of as much evidence as necessary for impossibility to question the involvement of the relevant persons in the crime.

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### **ОРГАНІЗАЦІЯ ТА ТАКТИКА ПРОВЕДЕННЯ СЛІДЧОГО ЕКСПЕРИМЕНТУ ЗА ФАКТАМИ КРАДІЖОК, УЧИНЕНИХ НЕПОВНОЛІТНІМИ**

**Анотація. Мета.** Метою статті є характеристика особливостей організації та тактики проведення слідчого експерименту за фактами крадіжок, учинених неповнолітніми. **Результати.** В умовах інтеграції України до європейського співтовариства, загострення соціально-економічної ситуації спостерігається суттєве зниження рівня життя й соціального захисту населення та поширення безробіття, що впливає на стан криміногенної ситуації в державі. На сьогодні злочинність досягла найвищого рівня за весь період існування незалежної держави. Конституція України закріплює непорушність права приватної власності та недоторканність житла від будь-яких протиправних

посягань. З огляду на це забезпечення охорони приватної власності, її захист від злочинних посягань є одним із пріоритетних завдань правоохоронних органів. Проте високий рівень криміналізації населення України, відсутність кваліфікованих кадрів у правоохоронних органах, руйнування системи попередження й профілактики злочинів, низька якість їх розкриття та розслідування створили підґрунтя для суттєвого збільшення кількості крадіжок майна громадян, особливо тих, що вчиняються неповнолітніми, і це набуває дедалі більш загрозливих форм. У статті розглянуто особливості проведення слідчого експерименту за фактами крадіжок чужого майна громадян, учинених неповнолітніми. Наголошено на тому, що для забезпечення достовірності висновків, які отримуються під час проведення дослідницьких дій, необхідно, щоб умови, у яких проводиться слідчий експеримент, були максимально наближені до тих, у яких відбувалася подія, що перевіряється. Крім того, необхідно забезпечити належну повноту й точність відтворення самих експериментальних дій, які іноді потрібно виконати багато разів, а також із відповідними варіаціями. **Висновки.** Зроблено висновок, що слідчий має критично ставитися до результатів розслідування загалом і проведеного слідчого експерименту зокрема. Незважаючи на те, що в організаційно-тактичному аспекті ця процесуальна дія є досить складною, її неможливо замінити жодною іншою слідчою (розшуковою) дією. Фіксацію проведення, окрім протоколу, доцільно здійснювати за допомогою фотографування та відеозапису. Кожна процесуальна дія має проводитися на високому рівні. Цим буде забезпечений збір такої кількості доказів, які у своїй сукупності не могли би піддати сумніву причетність відповідних осіб до вчиненого злочину.

**Ключові слова:** крадіжка, неповнолітній, організація, тактика, слідчий експеримент.

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