Professor Thompson was quoted in a Houston Chronicle article on circumstances that delayed arrest of the Houston day care operator who escaped to Nigeria.

Tata case puts focus on arrest process

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Police on TV are quick to hold suspects for questioning while they continue the investigation or demand that people surrender their passports before an arrest is made.

Real life seldom works that way, although legal experts say it is common to make an arrest before obtaining a warrant.

The Houston Fire Department and Harris County District Attorney's Office spent much of the past week trying to explain how the woman who ran a west Houston home day care was able to vanish before investigators could get a warrant for her arrest.

Jessica Rene Tata, 22, disappeared Feb. 26, one day before charges were filed in connection with a fire that killed four children and injured three others. A U.S. citizen, Tata is thought to be in Nigeria, where she has family.

On Friday, the U.S. Marshals Service added Tata to its 15 Most Wanted fugitive list and offered a reward of up to $25,000 for information that leads to her arrest.

The day before, a grand jury indicted Tata on four counts of manslaughter. And federal prosecutors now have charged her with unlawful flight to avoid prosecution. She earlier had been charged with six counts of reckless injury to a child and three counts of child abandonment.

Tata's disappearance left many wondering what, if anything, could have been done to prevent her leaving the country.

District Attorney Pat Lykos insisted her office did nothing wrong. Fire Chief Terry Garrison said that in retrospect, he might have done things differently.

Investigators don't need a warrant, but they do need probable cause to make an arrest. Still, they could have kept watch on Tata while searching for probable cause, said Sandra Guerra Thompson, a professor at the University of Houston Law Center.

"They are legally allowed to keep surveillance, and if they have some information the person is going to flee the country, they could try to accelerate things," she said.
Prefer to have warrant

Investigators said they waited to make an arrest until prosecutors agreed they had enough evidence for a warrant, but Thompson and other criminal law specialists said a warrant isn't necessary.

In fact, George E. Dix, a professor at the University of Texas law school, said he was surprised they didn't move more quickly.

"I read about the case, and I wondered about the failure to make a warrantless arrest," he said.

Texas law does require a warrant for arrest, he said.

"But the courts don't take that very seriously," he said. "There are a number of exceptions. They tend to apply those exceptions very liberally."

One sticking point in the Tata case appears to have been finding evidence that she left the children alone before the fire started. Store video and witness testimony indicate she was shopping when the fire broke out, but investigators wanted to be sure another adult wasn't present.

Thompson acknowledged that building a case can take time.

"There are cases that require a lot of judgment about whether someone should be held accountable," she said.

Law enforcement can detain a suspect during an investigation.

"There is a downside, though," said Phillip Lyons, professor of criminal justice at Sam Houston State University and executive director of its Texas Regional Center for Policing Innovation.

The suspect has to be taken before a magistrate relatively quickly and evidence pointing to the person's guilt must be presented, Lyons said.

Not a rare occurrence

Police often wait for a grand jury indictment before making an arrest in similar cases, he said.

"I don't think it's at all clear that anyone did anything wrong here," he said. "We live in a country where there is an expressed preference for arrests and searches to be done with warrants. In a high-profile case like this, if that means taking the time to secure a warrant, I think it's the right thing to do."

The District Attorney's Office was unable last week to say how often a suspect or defendant becomes a fugitive. But it's not unusual.

Jeff Wang, 42, a Chinese citizen on trial for aggravated sexual assault of a child, failed to show up in court Wednesday as a jury entered its third day of deliberations; the jury later deadlocked.
And last summer, Sajan Timal-shina, 26, of Spring, apparently fled to his home country of Nepal while Houston police investigated an accident in which Timalshina allegedly ran a red light and struck another car, killing three teenage girls.

Crime victim advocate Andy Kahan said he has worked with at least five families in cases where the suspect fled the country.

"It's gut-wrenching and extremely frustrating for parents when they find out this person ... is not even in the country," he said. "Even when we know where the suspect is located, that doesn't mean they're going to come back."

The United States does not have extradition treaties with China or Nepal, and Lyons said Mexico won't extradite suspects who face the death penalty here.

There is a treaty with Nigeria, although experts say even if Tata is caught, returning her to Houston could be a lengthy process.

Surrendering passport

As a U.S. citizen, Tata would have been considered less likely to flee than someone who is not a citizen, Lyons said.

Dealing with people at risk of disappearing is handled on a case-by-case basis.

Dix said he was unaware of any reason authorities can't ask a suspect to give up his passport before arrest, although the only thing they can do if the suspect refuses is to make the arrest.

Instead, when it happens, it's generally a condition of release on bond.

"But it certainly happens a lot on television," Lyons said.

Chronicle reporter Mike Glenn also contributed to this report.

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